



Execution Version

Western Harbour Tunnel and Sydney Harbour Tunnel Asset Management Deed

Transport for NSW

ABN 18 804 239 602

And

Ventia Australia Pty Ltd

ABN 11 093 114 553

9.11	Community relations	66
9.12	Environmental Requirements	66
9.13	Liability under the NGER Legislation	66
9.14	NGER Legislation Indemnity	67
9.15	Aboriginal participation	67
9.16	Heavy Vehicle National Law	68
9.17	Management of customers, stakeholders and other affected parties.....	69
9.18	Existing Operations	70
9.19	Third Party Agreements	71
9.20	Personnel	72
9.21	Workforce skills, diversity and industry participation targets.....	72
9.22	Engineering Authorisation	73
10.	SECURITY.....	74
10.1	AM Guarantee.....	74
10.2	Security Bond Requirements.....	74
10.3	Release of Security Bond.....	75
10.4	Recourse to Security Bond	76
10.5	Replacement of Security Bond	76
10.6	No injunction	77
10.7	Replacement of Security Bond upon expiry.....	78
10.8	Additional Bonds	78
11.	ACCESS AND MAINTENANCE SITE	78
11.1	Access	78
11.2	Mitigation	79
11.3	Extra Land	79
11.4	Access and inspection by the Principal	80
11.5	Conditions.....	81
11.6	Information Documents	83
11.7	Artefacts	85
11.8	Native Title Claim.....	85
11.9	Contamination	86
11.10	Principal access for works or upgrades.....	87
11.11	Asset Manager to vacate SHT TACF	88
12.	ACCESS TO INFORMATION	88
13.	CHANGES	88
13.1	Either party may propose a Change.....	88
13.2	Not Used.....	89
13.3	Payment for Changes.....	89
13.4	Asset Manager's entitlements	90
13.5	Approvals for Changes	90
14.	REIMBURSABLE SERVICES.....	91
15.	MAIN WORKS INTERFACE	91
15.1	Review of Main Works Tenderer Proposal Documents.....	91
15.2	Review of Main Works Design Documents.....	92
15.3	Main Works Variations	93
15.4	Main Works As-Built Documentation	94
16.	WHT OPENING COMPLETION.....	95
16.1	No entitlement for delayed WHT Opening Completion	95
16.2	Notice of delayed or accelerated WHT Opening Completion.....	95
17.	DEFECTS CORRECTION	95
17.1	Correction of Defects	95
17.2	Correction of Main Works Defects by a Main Works Contractor.....	97
17.3	Failure by the Asset Manager to comply with direction	97
17.4	Rights not affected	97
17.5	Temporary fixes.....	98
17.6	Liability for Defects.....	98
18.	OPERATION, MAINTENANCE AND REPAIR	98
18.1	General obligation	98

18.2	Obligation to keep Motorways open	98
18.3	Performance of AM Services	99
18.4	AM Services Documents and Asset Information System	101
18.5	Control of the Motorways	102
18.6	Reserved control rights	102
18.7	Inspection	102
18.8	Changes to Motorways.....	103
18.9	Advertising signage	103
18.10	Fixtures, fittings and equipment.....	103
18.10A	Free issue equipment.....	103
18.11	Notice of damage and accidents.....	104
18.12	Obligations prior to Expiry Date	104
18.13	Handover	105
18.14	Cableways.....	107
18.15	Security	107
18.16	Training management.....	107
18.17	SHT Initial Condition Report	108
19.	REPORTING AND NOTICES	110
19.1	Accounting and financial reporting.....	110
19.2	Copies of notices.....	110
19.3	Advice regarding rights	111
20.	PAYMENTS	111
20.1	AM Services Payment	111
20.2	Lane Rental Fees as only monetary compensation	111
20.3	Payment claims.....	112
20.4	Set-off.....	112
20.5	Performance assessment and Reporting	113
20.6	Records of costs.....	116
20.7	Payment of subcontractors	116
20.8	Suspension for non-payment	117
20.9	Security of Payment	117
20.10	Change of Use Sinking Fund	118
20.11	Change of Use Projects	118
20.12	Drawing on the Change of Use Sinking Fund.....	120
20.13	RLA Assets	120
21.	TRANSPORT NETWORK MANAGEMENT	122
21.1	No restrictions on the Principal.....	122
21.2	Permitted Activities	123
22.	INTERFACES	124
22.1	Interfaces	124
22.2	Main Works Interface Deed.....	124
23.	RATES, TAXES AND GST	125
23.1	Rates and Taxes	125
23.2	GST.....	125
24.	CHANGES IN LAW.....	127
24.1	No claim for change in Law.....	127
24.2	Qualifying Change in Law	127
24.3	Change in Codes and Standards.....	128
	██	████
24.5	Change in NSW Government Policy.....	129
25.	LOSS OR DAMAGE AND INSURANCE	131
25.1	Risk of loss or damage.....	131
	██	████
	██	████
	██	████
25.5	AM Insurances	132
25.6	Premiums.....	133
25.7	Dealing with claims	133

25.8	Principal Insurance.....	134
25.9	Reinstatement.....	134
25.10	Direction by the Principal to reinstate to different specifications.....	135
25.11	Not used.....	135
25.12	Asset Manager conduct of claims against third parties.....	135
25.13	Procedure for Third Party Claims.....	135
25.14	Uninsurable Risks.....	136
26.	INDEMNITY AND LIABILITY EXCLUSIONS.....	137
26.1	Indemnity from the Asset Manager.....	137
26.2	Exclusions from indemnity.....	137
26.3	Consequential Loss.....	138
26.4	No circularity.....	139
26.5	Mitigation.....	140
27.	CAP ON LIABILITY.....	140
27.1	Liability cap (general).....	140
27.2	Exclusions to the General Cap and the Reduction Cap.....	140
28.	INTELLECTUAL PROPERTY.....	141
28.1	Principal ownership of Contract Data.....	141
28.2	Licence of Intellectual Property Rights.....	141
28.3	Third Party Software.....	142
28.4	Warranty.....	142
28.5	Asset Manager to procure for the Principal.....	143
28.6	Moral rights.....	144
29.	CONFIDENTIALITY, PUBLICITY AND PRIVACY.....	145
29.1	General restriction.....	145
29.2	Exceptions.....	145
29.3	Confidentiality deeds poll.....	146
29.4	Third Party Confidential Information.....	146
29.5	Publicity.....	146
29.6	Disclosure by the Principal.....	147
29.7	Privacy.....	148
30.	DEFAULT AND TERMINATION.....	148
30.1	Events of Default.....	148
30.2	Notice of default.....	149
30.3	Step-in by the Principal.....	150
30.4	Termination for convenience by the Principal.....	152
30.5	Termination by the Principal.....	152
30.6	Right to damages.....	153
30.7	Termination by the Asset Manager.....	153
30.8	Termination for Uninsurable Force Majeure.....	154
30.9	Termination payments.....	154
30.10	Termination if no Notice to Proceed is issued.....	155
31.	DISPUTE RESOLUTION.....	155
32.	FORCE MAJEURE.....	155
32.1	Force Majeure notice.....	155
32.2	Meeting.....	156
32.3	Suspension of obligations.....	156
32.4	Duty to remedy Force Majeure.....	156
33.	END OF TERM.....	157
33.1	End of Term.....	157
33.2	Handover Condition.....	157
33.3	Handover.....	158
33.4	Effect of notice of Handover.....	158
33.5	Obligations after end of the Term.....	158
34.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	159
34.1	Representations and warranties by the Asset Manager.....	159
34.2	Representations and warranties by the Principal.....	160
34.3	Exclusivity of the Asset Manager.....	160

35.	AMENDMENTS TO OTHER AM DOCUMENTS	161
35.1	Variations to this deed	161
35.2	Amendments to other AM Documents	161
36.	ASSIGNMENT AND CHANGE IN CONTROL	162
36.1	Entitlement to assign	162
36.2	Change in Control of the Asset Manager.....	163
36.3	Change in control of an AM Guarantor	164
	██	████
37.	EXPENSES AND STAMP DUTIES	165
37.1	Expenses	165
37.2	Stamp duties	165
38.	NOTIFICATION OF CLAIMS	166
38.1	Notice of Change.....	166
38.2	Notice of other Claims.....	167
38.3	Prescribed notices	167
38.4	Continuing events	168
38.5	Bar.....	168
38.6	Other provisions unaffected.....	168
39.	NSW GUIDELINES	169
39.1	NSW Guidelines	169
39.2	Primary Obligation.....	169
39.3	Access and information	169
39.4	Sanctions	170
39.5	Compliance	170
39.6	Workplace Relations Management Plan	171
40.	COMMONWEALTH GOVERNMENT REQUIREMENTS.....	171
40.1	Building Code	171
40.2	WHS Accreditation.....	172
41.	NOTICES	173
41.1	How to give a notice	173
41.2	PDCS.....	173
41.3	Effectiveness of notices.....	174
41.4	When a notice is given	174
41.5	Address for notices.....	175
41.6	Communications by email	175
41.7	Communications by the PDCS.....	176
42.	GENERAL.....	176
42.1	Governing Law and jurisdiction	176
42.2	Cost	176
42.3	Taxes	176
42.4	Indemnity	176
42.5	Vienna Convention	177
42.6	Non reliance	177
42.7	Entire agreement	177
42.8	Counterparts	177
42.9	Unlimited discretion.....	177
42.10	Joint and several liability.....	178
42.11	No agency, partnership, joint venture or other fiduciary relationship.....	179
42.12	Waiver.....	179
42.13	No relief from obligations	179
42.14	Further acts and documents	179
42.15	Provisions limiting or excluding liability	180
42.16	Survival of certain provisions.....	180
42.17	PPS Act.....	180
42.18	Exclusion of proportionate liability scheme	181
42.19	Asset Manager not to apply proportionate liability scheme.....	181
42.20	Subcontracts	181
42.21	Moratorium legislation	182

42.22	Interest	182
42.23	Approvals not to affect obligations.....	182
42.24	Transfer of functions or Public Transport Agency assets	182

THIS DEED is made on 8 April 2022

BETWEEN:

- (1) Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) and located at 20-44 Ennis Road, Milsons Point NSW 2061 (**Principal**); and
- (2) Ventia Australia Pty Ltd (ABN 11 093 114 553) of Level 8, 80 Pacific Highway, North Sydney NSW 2060 (the **Asset Manager**).

RECITALS:

- (A) The parties have entered into this Deed to set out the terms on which, among other things the Asset Manager will carry out:
 - (1) services in connection with the procurement and delivery of the Main Works Contracts;
 - (2) the operation of the Motorways;
 - (3) the maintenance and repair of the WHT Motorway and the SHT Motorway; and
 - (4) the handover of the Motorways to the Principal at the end of the Term.
- (B) The Principal and the Asset Manager wish to enter into this deed and other AM Documents to record the terms on which the AM Services will be completed.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

ABCC means the body referred to in subsection 29(2) of the BCIIP Act.

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

Aboriginal has the meaning given to the term 'Aboriginal person' in the *Aboriginal Land Rights Act 1983* (NSW).

Aboriginal Participation Plan means a plan that satisfies the requirements for an "Aboriginal Participation Plan" described in the AP Policy.

Aboriginal Participation Report means a report that satisfies the reporting requirements in the AP Policy.

Actual Costs has the meaning given to that term in Schedule 24 (Payment Mechanism).

Actual Residual Asset Life has the meaning given to that term in Schedule 32 (Net Residual Asset Life Adjustment).

Additional Services means any service:

- (a) stated in this deed as being an Additional Service; or

- (b) within the general nature and scope of the AM Services that the Principal requests the Asset Manager to perform as an Additional Service.

Additional Services Margin has the meaning given to that term in Schedule 24 (Payment Mechanism).

Additional Services Payment means the amount payable by the Principal to the Asset Manager in consideration for the performance of any Additional Services, which will be determined in accordance with Part C.2 of Schedule 24 (Payment Mechanism).

[REDACTED]

Adjusted WHT AM Services has the meaning given in clause 5(a).

Affected Party has the meaning given to that term in clause 32.1(a).

Agreed Amount has the meaning given to that term in clause 23.2(b)(i).

Agreed Price has the meaning given to that term in paragraph 4 of the Change Procedure.

Amendment has the meaning given to that term in clause 35.2(a).

AM Close means the date on which the last of the Conditions Precedent referred to in clause 3.2 have been satisfied or waived in accordance with clause 3.2.

AM Documents means:

- (a) this deed;
- (b) the AM Guarantee;
- (c) the Main Works P2 Interface Deed;
- (d) any Moral Rights Consent;
- (e) any Significant Subcontract;
- (f) any Significant Subcontractor Side Deed; and
- (g) any other document the parties agree is an AM Document.

AM Guarantee means the deed of guarantee and indemnity dated on or about the Commencement Date which is given by the AM Guarantor to the Principal in respect of the obligations of the Asset Manager in the form set out in Schedule 28 (Form of AM Guarantee).

AM Guarantor means [REDACTED]

AM Insurance means a policy or policies of insurance which the Asset Manager is obliged to obtain under clause 25.5.

AM Margin means, as the context requires, the applicable Asset Manager margin for each category of the AM Services, each as set out in Schedule 24 (Payment Mechanism).

AM Phase Work has the meaning given to that term in clause 9.7(c).

AM Services means all things and tasks which the Asset Manager does, is, or may be, required to carry out or do to comply with its obligations under the AM Documents, including:

- (a) Core Services;
- (b) Reimbursable Services; and
- (c) Additional Services.

AM Services Documents means the Project Plans, the O&M Manuals for the SHT Motorway and (once developed and approved by the Principal under the Main Works Contracts) for the WHT Motorway, and the Asset Management Plans.

AM Services Payment means the service payment payable to the Asset Manager for performance of the AM Services, calculated in accordance with Schedule 24 (Payment Mechanism) and adjusted in accordance with this deed.

AM Services Plan means any plan required by Appendix A of the AM Services Specification, as that plan may be updated, amended and further developed under clause 9.5 and Schedule 21 (Project Plans and Asset Management Plans).

AM Services Specification means Schedule 33 (AM Services Specification).

ANZ SME means Australian and New Zealand micro, small and medium size enterprises with fewer than 200 employees.

AP Policy means the NSW Government Aboriginal Procurement Policy (January 2021) as amended or updated from time to time.

Apprentice means an employee undertaking a recognised Australian apprenticeship program and related qualification and holding a formal training contract, who has been employed to undertake the AM Services on the Maintenance Site.

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

- (a) to perform the AM Services;
- (b) in connection with the Project, any Extra Land, the Motorways and the Maintenance Site;
- (c) for the use and occupation of:
 - (i) the SHT Motorway and the DT Motorway; or
 - (ii) the WHT Motorway after the Date of WHT Opening Completion; or
- (d) otherwise to comply with Law,

including:

- (e) the Planning Approval; and
- (f) any Environment Protection Licence issued in relation to the AM Services,

but not including:

- (g) any Direction given by the Principal or the Principal's Representative pursuant to this deed;
- (h) the exercise by the Principal of its rights under this deed; or

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

ARRF Schedule means Schedule 31 (Asset Renewal Reserve Fund).

Artefacts means any and all:

- (a) valuable minerals, fossils or coins;
- (b) articles or objects of value or antiquity; or
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest.

ASA Authorisation means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Public Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which could be found on www.asa.transport.nsw.gov.au.

Assets means all elements of the WHT Motorway and SHT Motorway, excluding any roadside tolling equipment, as specified in the AM Services Specification.

Asset Information System means the system of that name referred to in the AM Services Specification.

Asset Lifecycle has the meaning assigned to it in the ASA Charter.

Asset Management Phase means the period:

- (a) commencing on the Date of WHT Opening Completion; and
- (b) expiring on the earlier of:
 - (i) the Expiry Date; or
 - (ii) the date on which this deed is terminated.

Asset Management Plans means:

- (a) the WHT Asset Management Plans;
- (b) the SHT Asset Management Plans; and
- (c) the Strategic Asset Management Plan.

Asset Manager Change Notice means a notice given by the Asset Manager under section 1.2(a) of the Change Procedure.

Asset Manager's Personnel means employees of the Asset Manager, to the extent that they are ordinarily engaged in the provision of the AM Services and performance of the Asset Manager's other obligations under this deed.

Asset Renewal Reserve Amount has the meaning given to that term in the ARRF Schedule.

Asset Renewal Reserve Fund or **ARRF** means the fund described in clause 20.13(a)(i).

Asset Standards Authority or ASA means the unit of that name established within the Principal, the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au.

Associate has the meaning given in sections 12 and 15 of the Corporations Act, provided that no persons will be deemed to be Associates merely because they are parties to, or become parties to, any AM Documents.

Australian Qualifications Framework or AQF means the national policy for regulated qualifications in Australian education and training which ensures national recognition and consistency, as well as common understanding across Australia of what defines each qualification.

Authorised Engineering Organisation or AEO means a legal entity to whom the ASA has issued an ASA Authorisation.

Authority means:

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

and includes the Clean Energy Regulator and TfNSW.

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

BBSY, for a period, means the rate expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10:10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by 10:30am then the BBSY will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

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

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

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

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

CBD Coordination Office means the CBD Coordination Office of TfNSW, which oversees traffic and transport during the transformation of the Sydney CBD and is a delivery office of TfNSW.

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

Change means any change or variation to the AM Services and includes additions, increases, decreases, omissions, deletions or removal to or from any of these.

Change Costs means, to the extent a Change increases the cost of the AM Services or the cost of performance of the obligations of the Asset Manager under this deed:

- (a) the Actual Costs reasonably arising out of or in connection with the Change (including any increased Actual Costs of construction, operations or maintenance); and
- (b) a reasonable amount on account of the off-site overheads and profit margin of the Asset Manager (which will be no greater than the AM Margin),

after deducting Change Savings arising from the Change.

Change in Codes and Standards means a change in the Codes and Standards (including any new code, standard, specification or guideline which replaces a Code and Standard) which takes effect after the Commencement Date, excluding:

- (a) a change in NSW Government Policy; or
- (b) a change in the Codes and Standards which, as at the Commencement Date:
 - (i) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or
 - (ii) a person experienced and competent in the delivery of services similar to the AM Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in Codes and Standards.

Change in Control means, in respect of an entity:

- (a) the occurrence of any event which results in a change in Control of that entity; or
- (b) any restructuring of that entity which materially diminishes the financial capacity of that entity or the capacity of that entity to perform its obligations under this deed.

Change in Law means:

- (a) the amendment, repeal or change after the Commencement Date of any legislation described in paragraph (a) of the definition of "Law" (**Statute Law**) existing at the Commencement Date;
- (b) the enactment after the Commencement Date of a new Statute Law,

but does not include any new Law or change in, or repeal of, any Law existing as at the Commencement Date:

- (c) relating to Taxes including the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth); or
- (d) that should reasonably have been known or anticipated by a prudent, experienced and competent operations and maintenance contractor exercising Maintenance Best Practices.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Change in NSW Government Policy means a change in a NSW Government Policy in force at the Commencement Date (which includes any new NSW Government Policy) which takes effect after the Commencement Date, excluding a change in NSW Government Policy which, as at the Commencement Date:

- (a) was published or of which public notice had been given (even as a possible change in NSW Government Policy); or
- (b) a person experienced and competent in the delivery of services similar to the AM Services would have reasonably foreseen or anticipated,

in substantially the same form as the change in NSW Government Policy.

Change of Use means:

- (a) a change in the ordinary way in which any of the Motorways, or any of the Assets forming part of the Motorways, is used by the public;
- (b) a change in the operation of the Greater Sydney road transport network which impacts any of the Motorways; or
- (c) any other similar change in circumstances relating to the Motorways,

and includes any change in connection with Smart Motorways, but excludes any change:

- (d) which is otherwise addressed by clauses 13, 15, 24.2, 32 or Schedule 25 (Power Usage Adjustment);
- (e) which relates to the tolling of the Motorways; or
- (f) in the volume or mix of traffic on the Motorways.

Change of Use Project means any works required to address a Change of Use, together with any consequential changes to the AM Services, but does not include the performance of any works or services which are:

- (a) already required under the terms of an Asset Management Plan;
- (b) required by the AM Services Specification; or

(c) the subject of a Change directed by the Principal.

Change of Use Project Order has the meaning given to that term in clause 20.11(c).

Change of Use Project Proposal has the meaning given to that term in clause 20.11(a).

Change of Use Savings means any reduction in the AM Services Payment arising out of or in connection with a Change which:

- (a) omits any part of the AM Services; and
- (b) the Principal determines (in its absolute discretion) relates to a Change of Use.

Change of Use Sinking Fund means the account referred to in clause 20.10(a).

Change Order means a notice given by the Principal under section 1.4(b), section 1.7(b), section 1.7(d), section 1.7(e)(i), section 1.9 or section 5(f) of the Change Procedure.

Change Procedure means Schedule 3 (Change Procedure).

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

Change Savings means:

- (a) the cost savings arising out of or in connection with the Change (including any savings in relation to the costs of asset management and associated on-site overheads); and
- (b) the AM Margin on the amounts referred to in paragraph (a).

Claim includes any claim, action, demand or proceeding for payment of money (including damages) or for relief:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Project, AM Services or any party's conduct prior to the Commencement Date; or
- (c) otherwise at Law including:
 - (i) under or for breach of any statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution including restitution based on unjust enrichment.

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

Codes and Standards means all codes, standards, specifications and guidelines referred to in the AM Services Specification.

Commencement Date means the date of this deed.

Commercially Sensitive Information means:

- (a) any information relating to the Asset Manager's cost structure or profit margins;

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

which, in respect of the information contained in the AM Documents, is the information described in Schedule 12 (Commercially Sensitive Information).

Commonwealth means the Commonwealth of Australia.

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

Commonwealth Minister has the meaning given to the terms "Minister" or "Commonwealth Minister" in the *Security of Critical Infrastructure Act (2018)* (Cth).

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

Community and Stakeholder Plan means the Project Plan of that name described in the AM Services Specification.

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

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of investment return, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect);
- (b) increase in direct or indirect financing costs; or
- (c) loss, damage, cost, expense or Liability that is:
 - (i) not a loss, damage, cost, expense or Liability that may fairly and reasonably be considered to arise naturally (being according to the usual course of things) from the breach or relevant matter; or
 - (ii) not fairly and reasonably contemplated by both the Principal and the Asset Manager at the Commencement Date as the probable result of the breach or relevant matter,

whether present or future, fixed or unascertained, actual or contingent.

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

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things (whether owned, leased, hired or otherwise) used in the carrying out of the AM Services:

- (a) in respect of the SHT Motorway or the DT Motorway; or
- (b) during the Asset Management Phase, in respect of the WHT Motorway,

but not forming part of any of the Motorways.

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

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

Contract Data means:

- (a) data (in any format or medium including in electronic form or written) generated by or stored within the Asset Information System;
- (b) Performance Data and Performance Source Data; and
- (c) any data or information relating to the Motorways or the Assets.

Contract Documentation and Deliverables has the meaning given to that term in clause 28.2.

Contract Period means each of:

- (a) the period commencing on the Commencement Date and expiring on the Initial Expiry Date (**Contract Period 1**);
- (b) if the Principal extends the Term under clause 4.2(b), the period commencing on the day after the Initial Expiry Date and expiring on the tenth anniversary of the Initial Expiry Date (**Contract Period 2**); and
- (c) if the Principal extends the Term for a second time under clause 4.2(b), the period commencing on the day after the tenth anniversary of the Initial Expiry Date and expiring on the twentieth anniversary of the Initial Expiry Date (**Contract Period 3**).

Contract Year means:

- (a) in respect of the first Contract Year, the period commencing on the Commencement Date and ending on the next 30 June;
- (b) subject to paragraph (c), each 12 month period during the Term commencing on 1 July and ending on 30 June; and
- (c) in respect of the final Contract Year, the period from the end of the last full Contract Year (as defined in paragraph (b)) to the end of the Term.

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

Core Services means all AM Services which are not Reimbursable Services or Additional Services.

Core Services Payment means the payment calculated in accordance with section A.4 of Schedule 24 (Payment Mechanism).

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

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

Corrective Maintenance has the meaning given to that term in the AM Services Specification.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Deficient SHT Asset Works has the meaning given to that term in clause 18.17(b)(ii)(C).

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

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

Dispute has the meaning given to that term in clause 31.

Dispute Resolution Procedure means the procedure for resolving Disputes set out in Schedule 2 (Dispute Resolution Procedure).

Drawdown Cap means, for each Contract Period, the amount specified for that Contract Period in the ARRF Schedule.

DT Motorway means the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures furniture, fittings, landscaping, spare parts and other improvements, comprising the 380-metre long bi-directional cut and cover tunnel extending beneath the Royal Botanic Gardens and Conservatorium Road, referred to as "**Domain Tunnel**" and located within the area described as the "DT Motorway" in Exhibit C.

Dutiable Transaction has the meaning given to that term in the *Duties Act 1997* (NSW).

Electricity Purchase Contract has the meaning given to that term in Schedule 25 (Power Usage Adjustment).

Electricity Supplier has the meaning given to that term in Schedule 25 (Power Usage Adjustment).

Emissions and Energy Data means:

- (a) any Data of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any Data of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator 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 concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

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

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and

- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c) of this definition.

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

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

Event of Default means any event specified in clause 30.1.

██
██

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

Existing Operations means:

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

Existing Operator means:

- (a) any owner, operator or controller of any telecommunication infrastructure on or in the vicinity of the Maintenance Site; and
- (b) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and Utility Services) or undertakes any business or operation on or in the vicinity of the Maintenance Site, including TfNSW,

and any of their Related Bodies Corporate and contractors.

Expiry Date means the Initial Expiry Date, as may be extended in accordance with clause 4.2.

Extra Land means the land referred to in clause 11.3.

Financial Year means the 12 month period commencing on 1 July and ending on 30 June.

First Liability Period means the period commencing on the Commencement Date and expiring on the Date of WHT Opening Completion.

Force Majeure means:

- (a) earthquake, cyclone, fire, explosion, flood;
- (b) malicious damage, sabotage, act of a public enemy, terrorism or civil unrest taking place in Australia;
- (c) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (d) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia; or

- (e) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia,

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

- (f) prevents or delays the Asset Manager from performing an obligation under the AM Documents; and
- (g) could not have been wholly Mitigated, prevented, avoided, remedied or overcome by the Asset Manager or its Related Parties taking those steps which a prudent, experienced and competent operations and maintenance contractor would have taken.

Forecast Residual Asset Life has the meaning given to that term in Schedule 32 (Net Residual Asset Life Adjustment).

Free Issue Equipment has the meaning given in clause 18.10A(a).

General Cap means:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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

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

GST and **GST law** and other terms used in clause 23.2 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST law also includes any applicable Australian Tax Office rulings and any reference to GST payable by the Supplier (as defined in clause 23.2) includes GST payable by the representative member of any GST group of which the Supplier is a member.

Handover means the Asset Manager has satisfied the requirements of clauses 18.13, 33.1 and 33.2.

Handover Condition has the meaning given to that term in the AM Services Specification.

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

Heavy Vehicle National Law means:

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

Immediate Termination Event has the meaning given to that term in clause 30.5(c).

Incident means any of the following incidents or events arising out of or in connection with the AM Services or a Motorway:

- (a) any work health and safety, environmental or security incident including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW;
 - (ii) loss of containment, escape of or migration of Contamination off-site and into the Environment;
 - (iii) any fire or dangerous event on the Extra Land, any Motorway or the Maintenance Site;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) any incident involving the community;
 - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Extra Land, any Motorway or the Maintenance Site;
 - (viii) a non-compliance with an Approval; or
 - (ix) any public complaint; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

- (c) an incident affecting traffic;
- (d) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (e) "occurrences" and "notifiable occurrences" under the WHS Legislation.

Indemnified Party has the meaning given to that term in clause 26.1(a).

Independent Certifier means any entity identified as the 'Independent Certifier' in a Main Works Contract.

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

- (a) referred to in Schedule 14 (Information Documents);
- (b) issued or made available by, or on behalf of, the Principal or the NSW Government, to the Asset Manager in connection with the Project or the AM Services (including anything issued or made available through the Principal's website), regardless of whether it was expressly classified or stated to be an "Information Document"; or
- (c) referred to, or incorporated by reference, in an Information Document,

whether issued or made available on, before or after the date of execution of this deed, unless such information, data, document or material is otherwise expressly stated to form part of this deed.

Initial Asset Management Phase means the period:

- (a) commencing on the SHT Handover Date; and
- (b) expiring on the Date of WHT Opening Completion.

Initial Asset Management Plans means the Asset Management Plans set out in Exhibit A.

Initial Expiry Date means the tenth anniversary of the Date of WHT Opening Completion.

Initial Project Plans means the Project Plans (or preliminary written submissions, which will be developed into Project Plans in accordance with this deed) set out in Exhibit A.

Initial Term means the period commencing on the Commencement Date and expiring on the Initial Expiry Date.

Insolvency Event means:

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

- (i) a moratorium of any debts of a person;
- (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
- (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;

- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Insured Liability has the meaning given to that term in clause 25.3(b).

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

Interface Protocol means an interface protocol developed by the Asset Manager pursuant to clause 22.1, in each case being a protocol related to interface and co-ordination issues, including:

- (a) design, construction, operations and maintenance, asset management, services and operation management, co-ordination and compatibility of works and other activities;
- (b) timing and programming of works, services and other activities;
- (c) access arrangements to relevant parts of the Maintenance Site;
- (d) processes and procedures for managing and minimising:
 - (i) impacts and interface issues; and
 - (ii) changes arising from interface issues,
 including setting up an interface working group which meets regularly;
- (e) exchange of information and dispute resolution;
- (f) management of work health and safety issues; and

(g) the transition of services to and from the Asset Manager.

KPI or Key Performance Indicator means the measure of the Asset Manager's standard of performance of the AM Services, set out in Schedule 24 (Payment Mechanism).

KPI Adjustment has the meaning given to that term in Schedule 24 (Payment Mechanism).

KPI Demerit Point has the meaning given to that term in Schedule 24 (Payment Mechanism).

KPI Event means a failure to meet a KPI.

Lane Closure has the meaning given to that term in Schedule 24 (Payment Mechanism).

Lane Rental Event has the meaning given to that term in Schedule 24 (Payment Mechanism).

Lane Rental Fee means an amount to be paid by the Asset Manager to the Principal in accordance with Part B2 of Schedule 24 (Payment Mechanism).

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

Legal Challenge has the meaning given to that term in clause 7.6(a).

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

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

Liability Period means each of:

- (a) the First Liability Period;
- (b) the period between the expiry of the First Liability Period and the expiry of Contract Period 1;
- (c) if the Principal extends the Term under clause 4.2(b), Contract Period 2; and
- (d) if the Principal extends the Term for a second time under clause 4.2(b), Contract Period 3.

Licensed Maintenance Areas means the areas described in section 1 of Schedule 17 (Site Access Schedule).

Limited Liability Asset means each component of the SHT Motorway or the WHT Motorway identified as a Limited Liability Asset in Schedule 34 (Limited Liability Assets).

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

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

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

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

Loss means:

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

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

Main Works means the works to be performed under the Main Works P1 Contract and the Main Works P2 Contract.

Main Works As-Built Documentation means the as-built documentation provided by the Main Works Contractors as required by the Main Works Contracts.

Main Works Award Change Order means the Change Order issued by the Principal pursuant to section 5(f) of the Change Procedure following the Main Works Contracts becoming effective in accordance with their terms.

Main Works Contracts means each of:

- (a) the Main Works P1 Contract; and
- (b) the Main Works P2 Contract.

Main Works Defect means any:

- (a) defect, deficiency, fault, error or omission in the WHT Motorway; or
- (b) any:

- (i) cracking, shrinkage, movement or subsidence in the WHT Motorway; or
- (ii) other aspect of the WHT Motorway or 'Contractor's Activities' (as defined in the Main Works P2 Contract),

which is not in accordance with the requirements of this deed, except to the extent following Opening Completion (or, in respect of a 'Handover Portion' (as defined in the Main Works P2 Contract), after the relevant 'Date of Handover Completion' (as defined in the Main Works P2 Contract)) that damage was not caused or contributed to by the Main Works Contractor or its 'Associates' (as defined in the Main Works P2 Contract).

Main Works Design Completion Change Order means the Change Order issued by the Principal pursuant to section 5(f) of the Change Procedure on the date referred to in section 5(h)(ii) of the Change Procedure.

Main Works Design Documents means any 'Design Documentation' (as defined in either of the Main Works Contracts).

Main Works P1 Contract means the contract to be entered into between the Principal [REDACTED] and a contractor for the carrying out of the Western Harbour Tunnel southern tunnel works.

Main Works P1 Contractor means the contractor engaged under the Main Works P1 Contract.

Main Works P2 Contract means the contract [REDACTED] for the carrying out of the Western Harbour Tunnel immersed tube, northern tunnel works and mechanical and electrical fitout works.

Main Works P2 Contractor means the contractor engaged under the Main Works P2 Contract.

Main Works P2 Interface Deed means the deed [REDACTED] substantially in the form set out in Schedule 8 (Main Works Interface Deed).

Main Works SWTC means the scope of works and technical criteria to be annexed to each executed Main Works Contract.

Main Works Tenderer Proposal Documents means design documents, returnable schedules and other material submitted by a Main Works Tenderer as part of its response (or as part of an interim submission) to the Principal's request for proposal for a Main Works Contract.

Main Works Tenderer means an entity selected by the Principal to respond to the Principal's request for proposal for a Main Works Contract.

Main Works Variation means any variation (however described) which is directed, or deemed to have been directed, by the Principal under the Main Works Contracts.

Maintenance Best Practices means operating, maintenance and repair practices performed with the due skill, care and diligence which may reasonably be expected of a skilled professional suitably qualified in the performance of obligations similar to the Asset Manager's obligations under this deed so as to achieve a result consistent with Law, reliability, safety, protection of the Environment and the requirements of this deed, including everything reasonably necessary to ensure that:

- (a) the Motorways are operated, maintained and repaired in a manner safe to all people and the Environment;
- (b) the Motorways are functioning as designed;
- (c) the Motorways are available pursuant to the requirements of the AM Services Specification;
- (d) operation, maintenance and repairs are performed to ensure availability of the Motorways and reliable long-term and safe operation and are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (e) sufficient operation and maintenance personnel are available and are adequately experienced and trained;
- (f) adequate materials, resources and supplies are available to ensure compliance with the requirements of this deed under normal conditions and reasonably anticipated abnormal conditions;
- (g) 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 Motorways and the manner in which it is carried out so as to ensure that the operation and maintenance of the Motorways is carried out in a manner which at all times remains consistent with the overall road network systems and standards; and
- (h) advancements in technology and updates to Codes and Standards which are required to comply with the principle in paragraph (g) of this definition are promptly responded to and incorporated into the operation and maintenance of the Motorways.

Maintenance Site means all areas affected by the AM Services, or on which the AM Services are carried out, including:

- (a) the Motorways; and
- (b) the Licensed Maintenance Areas.

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

Major Repair and Replacement Works means any repair, refurbishment, rehabilitation, or replacement of an Asset to:

- (a) return the affected Asset to a condition which complies with the requirements of this deed, with respect to the Asset's function, performance, amenity or utility and to meet its expected design life;
- (b) extend the viable, technical, supportable and economic life of the affected Asset; or
- (c) replace an Asset that has reach the end of its viable, technical, supportable and economic life,

excluding any repair, refurbishment, rehabilitation or replacement of an Asset which is Preventive Maintenance or Corrective Maintenance.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods parts and other items incorporated or to be incorporated into any of the Motorways.

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

- (a) at least [REDACTED] of the value of the Core Services Payment and the Asset Renewal Reserve Amount payable over the Term is subcontracted to Aboriginal businesses;
- (b) at least [REDACTED] of the Asset Manager's Australian based workforce (full time equivalent) directly contribute to the AM Services are Aboriginal employees; or
- (c) at least [REDACTED] of the value of the Core Services Payment and the Asset Renewal Reserve Amount as at the Commencement Date is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the AM Services.

Minister means any minister responsible for administering Part 5 (Classification of Roads) of the Roads Act.

Mitigate means, in respect of any event, taking all reasonable steps to preclude the cause of the event and avoiding or minimising the consequences of the event, including by expending reasonable sums of money and taking reasonable steps to accommodate the event or the effect of the event on the AM Services (including by changing the sequencing or timing of, or the methodologies used by the Asset Manager in carrying out, the AM Services).

Month means a calendar month.

Monthly Operational Management Report means a report which satisfies the requirements of Appendix B of the AM Services Specification.

Monthly Performance Report has the meaning given to that term in clause 20.3.

Monthly Progress Report means the monthly progress report to be provided in accordance with Appendix B.1 of the AM Services Specification.

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

Moral Rights Consent means a consent by the owner of Moral Rights substantially in the form of Schedule 11 (Moral Rights Consent).

Motorways means:

- (a) the WHT Motorway;
- (b) the SHT Motorway; and
- (c) the DT Motorway,

and **Motorway** means each of them individually.

Nationally Recognised Accredited Training means an AQF recognised qualification or part qualification, leading to formal certification or statement of attainment that a graduate has achieved learning outcomes as described in the AQF.

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

Net Residual Asset Life Adjustment or **NRALA** has the meaning given to that term in Schedule 32 (Net Residual Asset Life Adjustment).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

New Release means, in respect of any Software, software produced primarily to extend, alter or improve that Software by providing additional functionality or performance enhancement (whether or not defects in the software are also corrected) while still retaining the original designated purpose of that software.

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

Notice has the meaning given to that term in clause 41.1.

Notice to Proceed means a notice titled "Notice to Proceed" issued by the Principal to the Asset Manager under clause 5.

Notifiable Claim has the meaning given to that term in clause 25.7(a).

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

NSW Government Policies means the NSW Government Supplier Code of Conduct (February 2020), NSW Guidelines, AP Policy, NSW Government Environmental Management Guidelines (fourth edition) (December 2019), WHS Guidelines, Training Management Guidelines, Quality Management System Guidelines for Construction (December 2019), NSW Government Resource Efficiency Policy (GREP), NSW Government Procurement Directions and any other NSW Government guidelines and requirements specified or required by this deed or otherwise notified by the Principal.

NSW Government Procurement Directions means:

- (a) the NSW Government Procurement Direction PBD 2020-03: Skills, training and diversity in construction; and
- (b) the NSW Government Procurement Direction PBD-2019-03: Access to government construction procurement opportunities by small and medium sized enterprises.

NSW Guidelines means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (as published by the NSW Treasury in July 2013, and updated in September 2017).

NTP Handover Condition means that the WHT Motorway and the SHT Motorway and all Assets satisfy the requirements of sections 11.3(b)(i) and 11.3(b)(ii) of the AM Services Specification.

NTP Termination Date has the meaning given to that term in clause 5(e)(ii).

O&M Manuals means the manuals developed in accordance with clause 18.4 including the Project Plans incorporated into them as required by clause 9.5(f), which describe the policy, practices and procedures for the operation, maintenance and repair (including Major Repair and Replacement Works) of the Motorways.

Office of the Federal Safety Commissioner's Audit Criteria Guidelines means the Office of the Federal Safety Commissioner's Audit Criteria Guidelines (last updated 22 January 2018) as amended from time to time.

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

Open Source Licence means a licence which meets the requirements of the Open Source Definition propagated by the Open Source Institute (www.opensource.org).

Open Source Software means software which is licensed under the terms of an Open Source Licence, and includes all Updates and New Releases to that software.

Other Assets means each Asset which is not a RLA Asset.

Other Defect means any Defect which:

- (a) is not a Main Works Defect; and
- (b) the Asset Manager is required to rectify in accordance with the AM Services Specification.

Parameterised Change means a Change proposed by the Asset Manager under clause 15.1(c)(ii), clause 15.2(b)(ii), clause 15.3(b)(ii) or clause 15.4(b)(i).

Payment Claim means a payment claim submitted by the Asset Manager in accordance with clause 20.3 in the form reasonably required by the Principal.

Payment Statement has the meaning given to that term in clause 20.3(b).

PDCS means the Principal's web based project data and collaboration system, or such other electronic project data and collaboration system to be used by the Principal under clause 8.6.

Performance Audit Notice has the meaning given to that term in clause 20.5(h).

Performance Auditor has the meaning given to that term in clause 20.5(i).

Performance Data has the meaning given to that term in clause 20.5(a).

Performance Report means the Monthly Performance Report or the Quarterly Performance Report (as the case may be).

Performance Requirement means the required standard of performance in respect of a KPI.

Performance Source Data means all data and information from which the Performance Data is derived.

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

Permitted Activity has the meaning given to that term in clause 21.2.

Permitted Working Hours means the permitted working hours specified in the Planning Approval.

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

Planning Approval means:

- (a) the approval granted by the Minister for Planning and Public Spaces under the EP&A Act with the reference 'SSI 8863 – Western Harbour Tunnel and Warringah Freeway Upgrade', including all conditions to such approval and documents incorporated by reference;
- (b) any modification to the Primary Planning Approval; and
- (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Primary Planning Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Planning Approval Change means:

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

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

- (a) the Asset Manager's failure to comply with its obligations under an AM Document;
- (b) a wrongful act or omission of the Asset Manager or its Related Parties;
- (c) a failure by the Asset Manager or any of its Related Parties to comply with the EP&A Act or any other applicable legislation; or
- (d) any change or amendment requested or instigated by the Asset Manager or which results from any direct action of the Asset Manager (including any Change requested by the Asset Manager under this deed).

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

Preventive Maintenance has the meaning given to that term in the AM Services Specification.

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

Privacy Laws means:

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

Procurement Process Deed Poll means the form of procurement process deed poll entitled 'AM Procurement Process Deed Poll – In relation to the Western Harbour Tunnel and Sydney Harbour Tunnel Asset Manager' executed by the Asset Manager on 17 September 2021 in favour of the Principal.

Project means:

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

Project Plan means any AM Services Plan which is not an Asset Management Plan, as that plan may be updated, amended and further developed under clause 9.5.

Principal Insurance means the policy or policies of insurance specified in paragraph 1 of Schedule 26 (Insurances).

Principal's Representative means:

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

Public Transport Agency means:

- (a) TfNSW (and each of its divisions);
- (b) Sydney Trains, the body corporate constituted by section 36 of the *Transport Administration Act 1988* (NSW);
- (c) NSW Trains, the body corporate constituted by section 37 of the *Transport Administration Act 1988* (NSW);
- (d) Sydney Metro, the body corporate constituted by section 38 of the *Transport Administration Act 1988* (NSW); and

- (e) Transport Asset Holding Entity of New South Wales, the body corporate constituted under section 4 of the *Transport Administration Act 1988* (NSW).

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

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

Qualifying Change in Law means:

- (a) a Change in Law [REDACTED];
or
- (b) a Change in Codes and Standards which is the subject of a direction under clause 24.3(a)(ii)(B).

Quarter means:

- (a) in the case of the first Quarter, the period commencing on the first day of the Term and expiring on the day immediately prior to the first Quarterly Date occurring during the Term;
- (b) each 3 month period commencing on a Quarterly Date thereafter; and
- (c) in the case of the last Quarter, the period commencing on the last Quarterly Date occurring during the Term and ending on the expiry of the Term.

Quarterly Date means 1 January, 1 April, 1 July and 1 October in any year during the Term.

Quarterly Performance Report has the meaning given to that term in accordance with clause 20.5(c).

Recipient has the meaning given to that term in clause 23.2(b)(ii).

Recognised Aboriginal Business means a business:

- (a) certified or registered as an Indigenous business by Supply Nation (formerly the Australian Indigenous Minority Supplier Council);
- (b) which is certified as an Indigenous business by the NSW Indigenous Chamber of Commerce;
- (c) representing Aboriginal owned businesses in another state or territory that is a member of the First Australians Chamber of Commerce and Industry; or
- (d) that meets the definition of an Indigenous enterprise under the definition used in the Australian Government's 'Indigenous Procurement Policy'.

Reduction Cap means [REDACTED]
[REDACTED]
[REDACTED]

Reimbursable Services means any service:

- (a) specified in Appendix Q of the AM Services Specification; or
- (b) which the Principal and the Asset Manager agree is a Reimbursable Service.

Reimbursable Services Payment means the payment payable by the Principal to the Asset Manager in consideration for the performance of any Reimbursable Services, which will be determined in accordance with Part C.1 of Schedule 24 (Payment Mechanism).

Reimbursable Services Margin has the meaning given to that term in Part C.1 of Schedule 24 (Payment Mechanism).

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

Related Parties means:

- (a) in respect of the Principal:
 - (i) the Principal's Representative;
 - (ii) any of the employees, agents, contractors or officers of the Principal, the Principal's Representative,but excludes:
 - (iii) the Asset Manager and its Subcontractors;
 - (iv) the Main Works Contractors;
 - (v) the Independent Certifier; and
 - (vi) employees, agents, consultants, contractors (of any tier) and officers of the persons listed in paragraphs (a)(iii) to (v) of this definition;
- (b) in respect of the Asset Manager, its Related Bodies Corporate, Subcontractors and any of the respective employees, agents, contractors (in their capacity as contractors for the AM Services) or officers of the Asset Manager, its Related Bodies Corporate and its Subcontractors, but excludes:
 - (i) the Principal;
 - (ii) the Principal's Representative;
 - (iii) the Main Works Contractors; and
 - (iv) employees, agents, consultants, contractors (of any tier) and officers of the persons listed in paragraphs (b)(i) to (iii) of this definition.

Related Road Project means any road project undertaken by the Principal, the NSW Government or any of their affiliates which will connect to (whether directly or through another road), have an interface with, be integrated with, require modifications to, require access to land used for, or otherwise impact or be impacted by, the Motorways.

Relevant Insurer means an insurance company having a financial credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or equivalent rating with another reputable ratings agency).

Remediable Termination Event has the meaning given to that term in clause 30.5(a).

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

Remedy Notice has the meaning given to that term in clause 30.2(c).

Remedy Period has the meaning given to that term in clause 30.2(a).

Remedy Plan has the meaning given to that term in clause 30.2(c)(ii)(A).

Reports means each:

- (a) Monthly Progress Report;
- (b) Performance Report; and
- (c) other report,

which the Asset Manager is required to prepare and submit in accordance with the requirements of this deed, including the AM Services Specification.

Required Rating means a credit rating of at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

RLA Asset means each Asset identified in Appendix O of the AM Services Specification.

RLA Maintenance Activities means any maintenance activities in respect of an RLA Asset (excluding any Major Repair and Replacement Works) carried out by the Asset Manager under an amended Asset Management Plan agreed by the Principal in accordance with clause 9.5 and Schedule 21 (Project Plans and Asset Management Plans), to be funded from the Asset Renewal Reserve Fund.

Road Occupancy Licence or **ROL** means a road occupancy licence issued by TMC in accordance with the requirements of Appendix J of the AM Services Specification.

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

Roads Act means the *Roads Act 1993* (NSW).

[REDACTED]

Security Bond means the unconditional undertakings provided pursuant to clause 10.

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

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

[REDACTED]

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

SHT Asset means any Asset in the SHT Motorway.

SHT Asset Management Plans means:

- (a) the "SHT Annual Maintenance Plan", as described in the AM Services Specification;
- (b) the "SHT Forecast Major Repair and Replacement Plan", as described in the AM Services Specification;
- (c) the "Asset Management Plan (Tactical)" for the SHT Motorway, as described in the AM Services Specification; and
- (d) the "SHT Technical Maintenance Plans", as described in the AM Services Specification,

each as developed and approved in accordance with clause 9.5 and Schedule 21 (Project Plans and Asset Management Plans).

SHT Due Diligence Report means a report submitted by the Asset Manager under clause 18.17(b).

SHT Due Diligence Date means the first anniversary of the SHT Handover Date.

SHT Funding means the aggregate of:

- (a) the Core Services Payment which is payable for the AM Services in connection with the SHT Motorway; and
- (b) the part of the Asset Renewal Reserve Amount which is referable to Major Repair and Replacement Works and RLA Maintenance Activities to be carried out on the SHT Motorway by the Asset Manager.

SHT Handover Date means 1 September 2022.

SHT Initial Condition Report means the report prepared by AECOM Australia Pty Ltd ABN 20 093 846 925 and dated 14 August 2021, a copy of which is attached as Exhibit B to this deed.

SHT Mobilisation Phase means the period:

- (a) commencing on the Commencement Date; and
- (b) expiring on the day before the SHT Handover Date.

SHT Motorway means the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures furniture, fittings, landscaping, spare parts and other improvements, comprising the tunnel connecting the Warringah Freeway at North Sydney to the DT Motorway, referred to as "**Sydney Harbour Tunnel**" and located within the area described as the "SHT Motorway" in Exhibit C.

SHT TACF means:

- (a) until the Date of WHT Opening Completion, the meaning given to that term in the AM Services Specification; and
- (b) on and from the Date of WHT Opening Completion, means the WHT Motorway Control Centre.

Significant Subcontract means any Subcontract which:

- (a) has a contract value of greater than [REDACTED] in any one year or [REDACTED] in the aggregate; or
- (b) is for the works and services described in Schedule 6 (Significant Subcontracts).

Significant Subcontractor means a Subcontractor engaged under a Significant Subcontract.

Site Access Schedule means Schedule 17 (Site Access Schedule).

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

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

Smart Motorways means any system implemented by the Principal to enable the Principal to use, control and use data generated by, the Principal's traffic management assets to:

- (a) control, improve or manage the flow of traffic and congestion; and
- (b) support the Asset Manager's response to incidents,

on any of the Motorways or the surrounding road network.

Software means all software which is required to be provided by or for the Asset Manager to the Principal under this deed, including all Updates and New Releases to it provided to the Principal under this deed.

Spare Part has the meaning given to that term in the AM Services Specification.

Stakeholders has the meaning given to that term in clause 9.17(b).

Stamp Duty has the meaning given to that term in clause 37.2.

Strategic Asset Management Plan means the plan of that name described in the AM Services Specification, as developed and approved in accordance with clause 9.5 and Schedule 21 (Project Plans and Asset Management Plans).

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

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

Supplier has the meaning given to that term in clause 23.2(b).

Supply Chain means, for the purposes of workforce development and industry participation, the network of Subcontractors operating in Australia, and includes the Asset Manager, its Subcontractors and other entities engaged by them for the AM Services.

Surviving Clauses has the meaning given to that term in clause 42.16(a).

Sustainability Management Plan means the Project Plan of that name described in section A.3.17 of the AM Services Specification.

Target Satisfaction Date has the meaning given to that term in clause 3.2(a).

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

Term has the meaning given to that term in clause 4.1.

Termination Handover Condition means that the WHT Motorway and the SHT Motorway and all Assets satisfy the requirements of sections 11.3(b)(i) and 11.3(b)(ii) of the AM Services Specification.

TfNSW means Transport for NSW ABN 18 804 239 602.

Third Party Agreements means any agreement to which clause 9.19(b) applies.

Third Party Claim has the meaning given to that term in clause 25.13(a).

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

Third Party Software means all Software the copyright in which is owned by a person other than the Asset Manager.

Tolling Enabling Infrastructure has the meaning given to that term in the AM Services Specification.

Trade Workforce means any person that is required to hold a contractor licence for the trade in which they are engaged or a tradesperson on the Project, and includes any person who has qualified, or qualifies by service as an apprentice, for employment as a tradesperson.

Traffic Control Plan has the meaning given to that term in clause 9.6(a)(iii)(A).

Trainee means an employee registered as a trainee, holding a formal training contract with their employer, who is directly employed by the Asset Manager or its Subcontractors in the Supply Chain or hosted via a group training organisation and who has been employed by that employer to undertake the AM Services at the Maintenance Site for a period not less than 12 weeks.

Training Management Guidelines means the document entitled "Training Management Guidelines" prepared by the NSW Government and Training Services NSW and dated October 2021, as updated from time to time.

Training Management Plan means the Project Plan of that name described in the AM Services Specification.

Transport Assets has the meaning assigned to it in the ASA Charter.

Transport Management Centre or **TMC** means the Transport for NSW Transport Management Centre (also known as the 'Customer Journey Management Centre'), which forms part of the Greater Sydney division of the Principal.

Unauthorised Closure Default means the occurrence of an event described in clause 30.1(b)(i) or clause 30.1(b)(ii).

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

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

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

Uninsurable Force Majeure Event means, at any time:

- (a) a Force Majeure event referred to in paragraphs (c), (d) or (e) of the definition of Force Majeure, or sabotage, act of public enemy or terrorism (to the extent not required to be insured by the *Terrorism Insurance Act 2003* (Cth)); or
- (b) a Force Majeure event which:

- (i) causes physical loss or damage to a Motorway; or
- (ii) prevents the relevant Motorway being open to the public for the safe, continuous and efficient passage of vehicles,

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

Unit of Competency means an AQF recognised specification of knowledge and skill, and the application of that knowledge and skill, to the standard of performance expected in the workplace.

Update in respect of any software (including Software) means software which has been produced primarily to overcome defects in, or to improve the operation of, that software.

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

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

WHS Guidelines means the NSW Government Work Health and Safety Management Systems Guidelines (sixth edition) (December 2019) or any document issued from time to time which amends or substitutes that document.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the AM Services.

WHS Management Systems and Auditing Guidelines means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines 6th edition (December 2019), or any document issued from time to time which amends or replaces that document.

WHS Management Plan means the Project Plan of that name described in Appendix A.3.19 of the AM Services Specification.

WHT Asset Management Plan means:

- (a) the "WHT Annual Maintenance Plan", as described in the AM Services Specification;
- (b) the "WHT Forecast Major Repair and Replacement Plan", as described in the AM Services Specification;
- (c) the "Asset Management Plan (Tactical)" for the WHT Motorway, as described in the AM Services Specification; and
- (d) the "WHT Technical Maintenance Plans", as described in the AM Services Specification,

each as developed and approved in accordance with 9.5 and Schedule 21 (Project Plans and Asset Management Plans).

WHT Delivery Phase means the period:

- (a) commencing on the day after the earlier of:
 - (i) the date on which the Main Works P1 Contract becomes effective in accordance with its terms; and
 - (ii) the date on which the Main Works P2 Contract becomes effective in accordance with its terms,as notified to the Asset Manager by the Principal; and
- (b) expiring on the Date of WHT Opening Completion.

WHT LCC Model means the electronic files contained in the folder titled 'WHT LCC Model' in Schedule 36 (Electronic Files).

WHT Mobilisation Phase means the period:

- (a) commencing on the date six months prior to the anticipated Date of WHT Opening Completion, as notified to the Asset Manager by the Principal; and
- (b) expiring on the Date of WHT Opening Completion.

WHT Motorway means on and from the Date of WHT Opening Completion, the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures furniture, fittings, landscaping, spare parts and other improvements, connecting the Rozelle Interchange and the Warringah Freeway, to be called "**Western Harbour Tunnel**" or such other name as may be determined by the Principal.

WHT Motorway Control Centre means the 'Motorway Control Centre' to be designed and constructed as contemplated in section 1.1.3(b)(vii) of the AM Services Specification.

WHT Opening Completion has the meaning given to the term 'Opening Completion' in the Main Works P2 Contract.

WHT Procurement Phase means the period:

- (a) commencing on the Commencement Date; and
- (b) ending on the later of:
 - (i) the date on which the Main Works P1 Contract becomes effective in accordance with its terms; and
 - (ii) the date on which the Main Works P2 Contract becomes effective in accordance with its terms,as notified to the Asset Manager by the Principal.

WHT Reference Design means the reference design for the WHT Motorway contained in Schedule 35 (Main Works Reference Design).

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

Wilful Misconduct means an act or failure to act by the relevant party or its Related Parties that was intended to cause, or was in deliberate disregard of or deliberate indifference to,

harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

Workforce means all workers employed directly or contracted by the Asset Manager, Subcontractors and the broader Supply Chain inclusive of management and professional, technical and trade.

Workforce Skills Development means a Workforce training or development activity through undertaking Nationally Recognised Accredited Training and development that leads to qualifications, skills sets or Units of Competency at AQF Certificate II and above that supports the employee to meet or exceed delivery requirements and identified longer term career progression, but does not include 'training' undertaken to meet compliance requirements detailed in applicable legislation and associated regulations, standards and accreditations or in the various approvals, licenses, and permits that may be necessary for the commencement and control of work on the Maintenance Site.

Workforce Skills, Diversity & Industry Participation Plan means the plan required to be submitted by the Asset Manager under clause 9.21(c).

Workplace Relations Management Plan means the management plan of that name developed by the Asset Manager in accordance with this deed.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed; and unless the context indicates a contrary intention:
- (b) a capitalised term not defined in clause 1.1 has the meaning given to that term in the schedules to this deed;
- (c) person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) includes in any form is not a word of limitation;
- (f) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (g) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

- (h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (i) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (j) a reference to:
 - (i) this deed includes all schedules, exhibits, attachments and annexures to it, including the AM Services Specification; and
 - (ii) the AM Services Specification includes all Appendices to the AM Services Specification;
- (k) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (l) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) any reference to:
 - (i) the AM Services;
 - (ii) the WHT Motorway;
 - (iii) the AM Services Plans; or
 - (iv) any other document or thing,or any part of any of them:
 - (v) being fit for its purpose or for its intended purpose; or
 - (vi) as having an intended use,(or any similar reference) will be read as referring to the purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
 - (vii) the AM Documents;
 - (viii) the Main Works SWTCs; or

- (ix) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change), the Change Order or relevant direction to perform Additional Services and the documents referred to in the Change Order or relevant direction and documents issued by the Principal in connection with the Change Order;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
- (t) any references to ASA or Asset Standards Authority must be read as references to the 'Asset Management Branch' of TfNSW.

1.3 **Contra proferentem**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party (or its representative) put forward or drafted this deed or any provision in it.

1.4 **Business Day**

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

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

1.5 **Certification**

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

1.6 **Ambiguous terms**

- (a) If the Principal's Representative considers, or if the Asset Manager notifies the Principal's Representative that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any schedules, exhibits or annexures), the Principal's Representative must, subject to clause 1.7, direct the interpretation of this deed which the Asset Manager must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.6(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.6(a):
 - (i) will not relieve the Asset Manager from or alter its liabilities or obligations under this deed or otherwise according to Law;
 - (ii) will not entitle the Asset Manager to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;

- (iii) will not limit or otherwise affect the Principal's rights against the Asset Manager, whether under this deed or otherwise according to Law; and
- (iv) must, in respect of a notice given by the Asset Manager under clause 1.6(a), be given within 25 Business Days of receipt of that notice.

1.7 **Order of precedence**

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

- (a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (i) this deed excluding the schedules and exhibits; and
 - (ii) the schedules and exhibits;
- (b) to the extent that clause 1.7(a) does not apply or resolve the ambiguity, discrepancy or inconsistency, that part of the deed, AM Services Specification or Planning Approval which prescribes or requires the highest standard of compliance, the highest quality or standard or the more onerous obligation will take precedence (unless directed otherwise by the Principal's Representative).

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

1.8 **Severability**

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

- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 1.8(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

1.9 **Electronic file**

Where this deed (including the AM Services Specification) refers to an electronic file on a separate electronic storage medium (as particularised in Schedule 36 (Electronic Files)), such electronic files form part of this deed.

1.10 Indexation

Unless otherwise specified, all amounts to be "Indexed" under this deed are indexed in accordance with the process set out in Schedule 24 (Payment Mechanism).

1.11 Changes to indexes

The following rules apply to all indexation under this deed unless otherwise specified:

- (a) if there is a change in the coverage of the index from that applying at the Commencement Date and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and:
 - (i) there is a change in its coverage and it is not linked to another index; or
 - (ii) there is a change in its periodicity,
unless otherwise agreed by the parties, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this deed,
and that determination is final and binds the parties;
- (c) if there is a change in the reference base of the index from that applying at the Commencement Date and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this deed, in terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the Commencement Date and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not provide a conversion factor, unless otherwise agreed by the parties, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this deed, and that calculation is final and binds the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) publishes another index which is:
 - (i) a replacement of that index; and
 - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index which is linked to the index, unless otherwise agreed by the parties, the parties must request the President of the Institute of Actuaries (or the President's nominee)

to calculate a revised index for the purposes of the defined term's use in this deed, and that calculation is final and binds the parties;

- (g) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index in place of the index, unless otherwise agreed by the parties, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binds the parties; and
- (h) if a change in Law causes a material aberration in the index, the index will be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption by business or, in the absence of such publication, within 6 months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined by an independent expert in accordance with clause 31.

2. **PROJECT RISKS**

2.1 **Project risks**

The Asset Manager:

- (a) subject to the express provisions of this deed, accepts all risks associated with the AM Services;
- (b) subject to the express provisions of this deed, without limiting the generality of clause 2.1(a), as between the Principal and the Asset Manager, accepts all risks associated with:
 - (i) the cost of the AM Services, including:
 - (A) the cost of all Subcontractors and increases in the cost of Materials, Construction Plant, Utility Services for which the Asset Manager is responsible under clause 2.2 and labour required for the performance of the AM Services; and
 - (B) the cost of providing the AM Services arising from:
 - (aa) development of the Main Works Design Documents; and
 - (bb) any Main Works Variations;
 - (ii) the performance of Subcontractors;
 - (iii) obtaining access to all areas other than the Licensed Maintenance Area;
 - (iv) the occupation and use of the Maintenance Site and the Motorways by the Asset Manager (including the risk of any lane occupancy fees that may be payable in connection with such occupation or use);
 - (v) the Site Conditions encountered, including the condition of the Motorways;
 - (vi) all information provided or not provided by the Principal about the AM Services, the Motorways, the Project and the Maintenance Site;
 - (vii) Contamination of any land upon or within which the AM Services are undertaken;

- (viii) traffic conditions on the approach roads to the Maintenance Site and any other difficulties with obtaining access to and from the Maintenance Site;
 - (ix) complying with all Laws, Approvals and requirements of Authorities;
 - (x) the existence, location, condition and availability of Utility Services in respect of the AM Services;
 - (xi) providing all Materials, Construction Plant, Utility Services and labour necessary for the AM Services;
 - (xii) industrial relations issues;
 - (xiii) foreign exchange movements in any currencies adverse to the Asset Manager;
 - (xiv) damage to the Maintenance Site, the Extra Land or the Motorways;
 - (xv) third party claims;
 - (xvi) Liability for Taxes, including the risk that Liability for Taxes is greater than estimated by the Asset Manager or its advisers; and
 - (xvii) traffic flow, vehicle mix and volume on the Motorways (or any of them) being greater, less or otherwise different than estimated or stated in the AM Services Specification, the Main Works SWTC or elsewhere in this deed; and
- (c) acknowledges that the Principal has not made any representation or given any warranty in respect of the traffic usage of any of the Motorways, any future project to be undertaken by TfNSW or the Principal or any other party after the Commencement Date to connect any new road or other means of motor vehicle access to any of the Motorways, or any other road.

2.2 Project risks – Utility Services

- (a) Subject to clause 2.2(c), the Asset Manager accepts all risks associated with the cost of the Utility Services required for the performance of the AM Services (including the cost of consumption of Utility Services).
- (b) The Asset Manager acknowledges that the AM Services Payment takes into account the cost of the Utility Services to the extent outlined in clause 2.2(a) required for the performance of the AM Services.
- (c) The Asset Manager acknowledges that the AM Services Payment may, from time to time, be adjusted (positively or negatively) by applying a power usage adjustment (as set out in Schedule 25 (Power Usage Adjustment)) depending on the Asset Manager's consumption of electricity.
- (d) The parties acknowledge that the Principal will be responsible for:
 - (i) procuring the connection and supply of electricity for:
 - (A) the SHT Motorway from the SHT Handover Date; and
 - (B) the WHT Motorway from the Date of WHT Opening Completion;
 - (ii) conducting all electricity procurement activities including tendering, negotiation and execution of Electricity Purchase Contracts; and

- (iii) payment of all charges payable under Electricity Purchase Contracts to relevant Electricity Suppliers.
- (e) In carrying out the AM Services, the Asset Manager must ensure that it does not cause the Principal to be in breach of any Law (including electricity Laws that impose obligations on the Principal as electricity purchaser).
- (f) The Asset Manager must carry out and complete all activities necessary for the Principal to comply with Laws relating to electricity infrastructure.

3. **CONDITIONS PRECEDENT**

3.1 **Commencement of obligations**

The rights and obligations of the parties under this deed (other than Day 1 Clauses which commence on the Commencement Date) will commence on AM Close.

3.2 **Satisfaction of conditions precedent**

- (a) The Asset Manager must use all reasonable endeavours to satisfy the Conditions Precedent by 5.00pm Sydney Time on the date which is 15 Business Days after the Commencement Date (**Target Satisfaction Date**).
- (b) The Principal may waive any of the Conditions Precedent.
- (c) The Asset Manager must give the Principal's Representative notice when the Asset Manager has reasonably formed the view that a Condition Precedent has been satisfied or unconditionally waived, and the Principal's Representative must give notice to the Asset Manager of whether or not it agrees with the Asset Manager's notice.
- (d) The Principal's Representative will notify the Asset Manager promptly of the date on which the Principal's Representative is satisfied that all Conditions Precedent have been satisfied or unconditionally waived.
- (e) Following the occurrence of AM Close, the Principal must promptly notify the Asset Manager in writing of such occurrence.

3.3 **Target Satisfaction Date**

- (a) If a Condition Precedent referred to in clause 3.2 has not been satisfied (or waived under clause 3.2) by 11:59pm on the Target Satisfaction Date, then either party may terminate this deed by prior notice to the other party.
- (b) The period of the notice referred to in clause 3.3(a) will expire 5 Business Days after 11:59pm on the Target Satisfaction Date and this deed will only be terminated if the Conditions Precedent referred to in clause 3.2 have not been satisfied (or waived under clause 3.2) within that period.
- (c) If this deed is terminated pursuant to this clause 3.3:
 - (i) each of the other AM Documents to which the Asset Manager is a party will be taken to have terminated at the time this deed is terminated;
 - (ii) the Principal must return all unconditional undertakings provided by the Asset Manager to the Asset Manager within 7 Business Days after the date of termination of this deed; and

- (iii) no party will have any Claim against any other party under or in respect of the AM Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with the Project, except for any Claim in relation to breaches of any Day 1 Clause.

4. TERM

4.1 Term

The term of this deed commences on the Commencement Date and expires on the Expiry Date unless lawfully terminated earlier (**Term**).

4.2 Extension to the Term

(a) The Principal may extend the Expiry Date up to twice by giving the Asset Manager a written notice to that effect:

- (i) on the first occasion, no later than 24 months prior to the Initial Expiry Date; and
- (ii) on the second occasion (if any), no later than 24 months prior to the tenth anniversary of the Initial Expiry Date.

(b) Each time the Principal gives the Asset Manager a notice under clause 4.2(a), the Expiry Date will be extended by ten years on the same terms as this deed unless otherwise agreed by the parties in writing, provided that the AM Services Payment payable for the extended Term will be as provided for in Schedule 24 (Payment Mechanism).

5. NOTICE TO PROCEED

[Redacted]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

6. **PLANNING APPROVAL**

The parties acknowledge and agree that as at the Commencement Date, the Principal has received the Primary Planning Approval for the Main Works.

7. **COMPLIANCE WITH LAW AND APPROVALS**

7.1 **Compliance with Law**

The Asset Manager must:

- (a) in carrying out the AM Services, comply with;
- (b) ensure that its Related Parties, in carrying out the AM Services, comply with;
- (c) ensure that the performance or non-performance of the AM Services do not cause or contribute to any of the Motorways failing to comply with; and
- (d) provide the Principal with such assistance as may reasonably be required by it to enable the Principal to comply with,

all:

- (e) applicable Laws (including the Heavy Vehicle National Law), including any change in Law after the Commencement Date; and
- (f) NSW Government Policies,

and must not engage in, and must ensure that its Related Parties, in carrying out the AM Services, do not engage in, any fraud, bribery or corruption.

7.2 Consents and Approvals

- (a) In relation to any document required to be prepared pursuant to the Planning Approval which relates to the AM Services and which is also required to be submitted to an Authority, the Asset Manager:
- (i) must promptly (other than in respect of a condition of the Planning Approval that the Asset Manager is not required to comply with pursuant to Part B of Schedule 15 (Approvals)):
 - (A) provide the Principal's Representative with copies of any such documents;
 - (B) provide the Principal with an opportunity to comment on any such documents;
 - (C) consider any comments made by the Principal in relation to any such documents;
 - (D) deliver a final version of any such documents in order to enable the Principal to submit the relevant document to any Authority in accordance with the requirements of the Planning Approval; and
 - (E) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to comply with all applicable Laws; and
 - (ii) warrants that:
 - (A) any document the Asset Manager prepares in accordance with this clause 7.2(a) will comply with the EP&A Act and any other applicable legislation; and
 - (B) the Asset Manager will prepare each document in accordance with Good Industry Practice.
- (b) The Asset Manager must:
- (i) expeditiously apply for and obtain from each relevant Authority all Approvals required to perform the AM Services and its obligations under this deed (other than the Planning Approval);
 - (ii) comply with the lawful requirements of each such Authority to permit their proper consideration of the applications for Approvals;
 - (iii) comply with, carry out and fulfil all conditions and requirements of all Approvals (including those which the Principal is expressed under the terms of the Approval to be required to comply with, carry out and fulfil) to the extent relevant to the AM Services (other than in respect of a condition of the Planning Approval that the Asset Manager is not required to comply with pursuant to Part B of Schedule 15 (Approvals));
 - (iv) in respect of any Approval relating to the AM Services and its obligations under this deed, pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority;
 - (v) without limiting the Principal's obligation to satisfy or fulfil the conditions and requirements of the Planning Approval allocated to the Principal under Schedule 15 (Approvals), provide the Principal (as a Reimbursable Service)

with such assistance as may be reasonably required by the Principal to enable the Principal to obtain, or satisfy or fulfil the conditions and requirements of any Approvals which are obtained by the Principal after the Commencement Date; and

- (vi) otherwise comply with clause 7.1.
- (c) The Asset Manager acknowledges that:
 - (i) the Principal is the proponent under the EP&A Act in respect of the submission of any such document; and
 - (ii) the Principal will rely upon the Asset Manager's warranties in this clause 7.2.

7.3 **Planning Approval Modification Application Documents**

The parties agree that, subject to the terms of Part B of Schedule 15 (Approvals), the Asset Manager must to the extent required for the performance of the AM Services and the Asset Manager's obligations under this deed provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain any necessary amendments or modifications to the Planning Approval, provided that the provision of any such assistance to the Principal will be a Reimbursable Service.

7.4 **Planning Approval Change Events**

- (a) Without limiting clause 7.4(b), clause 13.1 will apply as if the Principal had issued a Change Order if a Planning Approval Change Event occurs and requires:
 - (i) a Change to be made to the AM Services;
 - (ii) a reduction in the Permitted Working Hours or Permitted Noise and Vibration Limits; or
 - (iii) a Change to any of the Motorways or the operation of any of the Motorways.
- (b) The Asset Manager must:
 - (i) take all reasonable steps to Mitigate the cost of the Change;
 - (ii) for this purpose, comply with all reasonable directions of the Principal concerning the Change, and its consequences; and
 - (iii) ensure that its Subcontractors comply with this clause 7.4(b),and the Principal's liability under clause 7.4(a) will be reduced to the extent that the Asset Manager fails to comply with these obligations.
- (c) Except to the extent expressly stated otherwise in this clause 7.4, the Asset Manager will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) a modification to the Planning Approval; or
 - (ii) a Planning Approval Change Event.

7.5 **Modifications to the Planning Approval**

The Asset Manager:

- (a) acknowledges and agrees that:
 - (i) as between the Principal and the Asset Manager, only the Principal is permitted to make or apply for modifications to the Planning Approval;
 - (ii) the Principal may refuse to make, seek or apply for such modification or discontinue or withdraw or change an application for such modification at any time; and
 - (iii) the Principal need not apply for any modification to the Planning Approval on behalf of the Asset Manager unless the Asset Manager first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the modification;
- (b) must not make, seek or apply for any modification to the Planning Approval other than through the Principal; and
- (c) must pay to the Principal all fees, costs and expenses arising out of, or in any way in connection with, any such modification sought by or on behalf of the Asset Manager to the Planning Approval instigated or requested by the Principal.

7.6 Environmental assessment

- (a) If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or determination in respect of the Project or any of the Motorways under:
 - (i) the EP&A Act; or
 - (ii) any other Law,

(including a legal challenge to the Planning Approval) (**Legal Challenge**), the Asset Manager must continue to perform its obligations under this deed unless, as a result of that Legal Challenge, it is otherwise ordered by a court or directed by the Principal's Representative.
- (b) Subject to clause 7.6(c), as between the Principal and the Asset Manager, the Principal is responsible for dealing with the Legal Challenge as it sees fit in its absolute discretion.
- (c) If requested to do so by the Principal, the Asset Manager must provide reasonable assistance to the Principal in dealing with any Legal Challenge, including by attending any relevant meetings and providing any information available to the Asset Manager, at the Asset Manager's cost.
- (d) For the purposes of clause 7.6(a), the Principal's Representative may by notice direct the Asset Manager to suspend any or all of its obligations under this deed until such time as the Principal gives the Asset Manager further notice and the Asset Manager must comply with that notice.
- (e) The Principal will have no liability to the Asset Manager in respect of an order by a court or direction by the Principal's Representative that the Asset Manager cease to perform all or part of its obligations under this deed as a result of a Legal Challenge to the extent that the Legal Challenge:
 - (i) is initiated or upheld, or the court order is made, due to:
 - (A) the Asset Manager's breach of, or failure to comply with its obligations under, an AM Document;

(B) a wrongful act or omission of the Asset Manager or its Related Parties;
or

(C) a failure by the Asset Manager or any of its Related Parties to comply with the EP&A Act or any other applicable legislation; or

(ii) relates to or arises out of or in connection with any Change proposed by the Asset Manager in accordance with section 2.2 of the Change Procedure or otherwise carried out by the Asset Manager without the Principal having issued a Change Order in respect of that Change.

(f) If a Legal Challenge occurs and, as a consequence of that Legal Challenge, the Asset Manager receives an order by a court or direction by the Principal's Representative pursuant to clause 7.6(a) or clause 7.6(d) which requires that the Asset Manager suspend or cease to perform any or all of its obligations under this deed, other than due to the circumstances contemplated in clause 7.6(e):

(i) where such order or direction is received in respect of the WHT Motorway prior to the Date of WHT Opening Completion, the Principal may give the Asset Manager notice that the Date of WHT Opening Completion is being extended and the "Delivery Services Payment" (as defined in Schedule 24 (Payment Mechanism)) will be adjusted in accordance with section A.4(d) of Schedule 24 (Payment Mechanism); and

(ii) where such order or direction is received:

(A) in respect of the SHT Motorway or the DT Motorway; or

(B) on or after the Date of WHT Opening Completion,

there will be no adjustment to the Core Services Payment but the Asset Manager will continue to be entitled to the Core Services Payment notwithstanding the suspension or cessation (unless the Principal directs a Change) and the provisions of clause 20 will continue to apply during the period of suspension.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. RELATIONSHIP OF THE PRINCIPAL AND THE ASSET MANAGER

8.1 The Principal's Representative

- (a) The Principal:
 - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
 - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
 - (iii) must give notice of all appointments under clauses 8.1(a)(i) and 8.1(a)(ii) to the Asset Manager.
- (b) The Principal's Representative may:
 - (i) by notice to the Asset Manager appoint persons to exercise any of the Principal's Representative's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) vary or revoke any appointment under clause 8.1(b)(i) by notice to the Asset Manager.
- (c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 8.1(b).
- (d) An appointee of the Principal's Representative under clause 8.1(b) may:
 - (i) by notice to the Asset Manager appoint persons to exercise any of the appointee's functions under this deed;

- (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 8.1(d)(i) by notice to the Asset Manager.
- (e) The parties acknowledge and agree that the Principal's Representative acts at all times as the servant or agent of the Principal and is subject to the directions of the Principal and will act solely in the interests of the Principal.
- (f) Unless expressly provided otherwise in this deed, a representative of the Principal appointed pursuant to this clause 8.1 is not obliged to review, or comment upon, any documentation or information which the Asset Manager gives to the Principal in respect of the AM Services.

8.2 **Asset Manager's Representative**

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

8.3 **Authorities**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law (including its functions and powers that are exercised through TMC and in relation to Road Occupancy Licences).
- (b) The Asset Manager acknowledges and agrees that, without limiting clause 8.3(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed or any AM Document and will not entitle the Asset Manager to make any Claim against the Principal.
- (c) The Asset Manager acknowledges and agrees that:
- (i) there are Authorities (other than the Principal) with jurisdiction over aspects of the AM Services, parts of the Maintenance Site and other areas affected by the AM Services (including Extra Land);
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the AM Services (including the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers);
 - (iii) notwithstanding any other provision of this deed, the Asset Manager acknowledges that the Principal is not authorised to:
 - (A) exercise any power, function or duty within the responsibility of any other Authority; or

- (B) influence, override or direct any Authority in the proper exercise of its legal duties and functions;
- (iv) notwithstanding any requirement that the Principal use its best endeavours or reasonable endeavours to do anything or bring about any outcome under any AM Document, the Principal is not obliged to:
 - (A) interfere with or influence the exercise by any Authority of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that it regards as not being in the public interest; or
 - (C) develop policy or legislate by reference only, or predominantly, to the interests of the Project; and
- (v) except to the extent expressly stated otherwise in this deed, it bears the full risk of all occurrences of the kind referred to in clause 8.3(c)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

8.4 **Project groups and service delivery groups**

If the Principal's Representative so requests, the Asset Manager must attend, or procure the attendance of any of its Subcontractors at any meeting of any project group or service delivery group that may be established, or any other meeting required by the Principal.

8.5 **Principal action**

- (a) If:
 - (i) the Asset Manager:
 - (A) fails to perform an obligation under this deed, including its obligations in relation to the rectification of Defects; and
 - (B) has not within a reasonable time after the date of receipt of a notice from the Principal requiring such failure to be remedied or a direction from the Principal under clause 17.1(b), taken steps to remedy the failure, or having taken or procured such steps, fails to remedy or procure the remedy of the failure within a reasonable time; or
 - (ii) the Principal considers that urgent action is reasonably necessary to minimise the risk of harm to:
 - (A) the health or safety of persons;
 - (B) the Environment;
 - (C) any property; or
 - (D) the safe operation of any road (including the Motorways),

then the Principal may take such action as it considers necessary to remedy the failure by the Asset Manager (including requiring any of the Motorways, or part of a Motorway, to be closed) or to take that urgent action to minimise that risk of harm and the Principal may for this purpose enter and remain on the Maintenance Site and any other land upon which the AM Services are being carried out.

- (b) Without limiting clause 8.5(a), if the Principal considers that any action is necessary for the efficient operation or maintenance of a Motorway, then the Principal may take any such action.
- (c) Any Loss suffered or incurred by the Principal in taking action referred to in clause 8.5(a)(i) or 8.5(a)(ii) following the events referred to in clause 8.5(a)(i) or (as a result of a breach or other wrongful act or omission of the Asset Manager) clause 8.5(a)(ii) will be a debt due and payable from the Asset Manager to the Principal.

8.6 Document management and transmission

- (a) Without limiting clause 41.1, the Asset Manager must, where required by the Principal's Representative:
 - (i) implement and use the PDCS to manage and transmit all documentation connected with the Project in accordance with the processes, procedures and systems reasonably required by the Principal's Representative;
 - (ii) align its document management and quality processes to complement and utilise the functions and features of the PDCS;
 - (iii) use the PDCS mail module for all correspondence relating to the Project between the Principal and the Asset Manager;
 - (iv) upload all documentation which is required for the performance of the AM Services to the PDCS; and
 - (v) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (b) Documents supplied to the Asset Manager, as between the Principal and the Asset Manager, will remain the property of the Principal and must be returned by the Asset Manager to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the AM Services.
- (c) The Asset Manager must keep all the Asset Manager's records relating to the AM Services in a secure and fire proof storage.
- (d) The Asset Manager will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 8.6.
- (e) The Asset Manager must ensure that any documentation that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

9. ASSET MANAGER'S FUNDAMENTAL OBLIGATIONS

9.1 Asset Manager's general obligations

The Asset Manager:

- (a) must carry out the AM Services, including:
 - (i) contracting for the provision of, acquiring or otherwise procuring or providing all Materials, Construction Plant, Utility Services (other than electricity) and labour required for the performance of its obligations under this deed; and
 - (ii) operating the Motorways; and
 - (iii) maintaining and repairing the WHT Motorway and the SHT Motorway, in accordance with this deed;
- (b) warrants that:
 - (i) the AM Services will be completed in accordance with, and satisfy the requirements of, this deed; and
 - (ii) the Asset Manager will perform the AM Services so that:
 - (A) the performance or non-performance of the AM Services does not cause or contribute to any failure of the WHT Motorway to remain fit for its intended purposes; and
 - (B) the Asset Manager achieves Handover by the time required by this deed;
- (c) without limiting any other provision of this deed, must use its best endeavours to perform the AM Services so that the KPIs are satisfied;
- (d) will be liable to the Principal for the acts and omissions of its Related Parties and their respective employees and agents as if such acts or omissions were acts or omissions of the Asset Manager;
- (e) in carrying out the AM Services, unless otherwise expressly permitted by this deed, the Asset Manager must at all times during the Term:
 - (i) not impede the Principal or its Related Parties in the operation of the Motorways; and
 - (ii) keep all traffic lanes of the SHT Motorway and the DT Motorway open to the public for the safe, efficient and continuous passage of vehicles; and
 - (iii) after the Date of WHT Opening Completion, keep all traffic lanes of the WHT Motorway open to the public for the safe, efficient and continuous passage of vehicles; and
- (f) must comply with the AM Services Specification.

9.2 Subcontracts

- (a) The engagement by the Asset Manager of any Subcontractor to perform some or all of the Asset Manager's obligations under this deed will not limit or affect the Asset Manager's obligations or Liability under any AM Document.
- (b) The Asset Manager will be vicariously liable to the Principal for the acts and omissions of:
 - (i) its Related Parties and their respective employees and agents; and

(ii) its Subcontractors and their respective related parties,

as if such acts or omissions were the acts or omissions of the Asset Manager.

(c) The Principal and the Asset Manager acknowledge and agree that the Asset Manager's obligations under this deed are not lessened or otherwise affected by the Principal's awareness of the terms of any Subcontract.

(d) The Asset Manager acknowledges and agrees that if this deed is terminated for any reason, or the Principal takes over the AM Services, the Asset Manager must, after the Principal has given a Direction to do so, consent to a novation of any Significant Subcontract to the Principal.

(e) The Asset Manager must not:

(i) enter into;

(ii) terminate, surrender, rescind or accept repudiation of;

(iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(iv) where it may impact the rights or increase the liabilities or obligations of the Principal:

(A) enter into any agreement or arrangement which affects the operation or interpretation of; or

(B) make or permit any amendment to, or replacement of or waiver of a provision of,

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

(f) The Asset Manager must procure that each Significant Subcontractor executes, and deliver to the Principal, a direct deed substantially in the form of Schedule 7 (Significant Subcontractor Side Deed) (amended as required to reflect the relevant counterparty to the Significant Subcontract) in respect of its Significant Subcontract.

9.3 Utility Services

The Asset Manager:

(a) acknowledges that it is responsible for the maintenance of all connections for all Utility Services the Asset Manager needs to perform its obligations under the AM Documents;

(b) must ensure there are no unplanned disruptions to the Utility Services in carrying out the AM Services and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the AM Services;

■ [REDACTED]



9.4 **Long service levy**

Before any construction work commences under this deed (if any), the Asset Manager must:

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

9.5 **AM Services Plans**

- (a) Each AM Services Plan must:
 - (i) comply with the requirements of the AM Services Specification;
 - (ii) in the case of Project Plans, be developed consistently with the Initial Project Plan of that Project Plan (if any); and
 - (iii) in the case of Asset Management Plans, be developed consistently with the Initial Asset Management Plan of that Asset Management Plan unless otherwise agreed with the Principal.
- (b) The Asset Manager must continually review and, if necessary, update the AM Services Plans to take into account events or circumstances which will, or may reasonably be expected to, affect the manner in which the Asset Manager carries out the AM Services, including:
 - (i) Changes and any agreed Change of Use Projects;
 - (ii) changes in Law;
 - (iii) Approvals (including the conditions of Approvals);
 - (iv) any breach or potential breach of the warranty in clause 9.1(b);
 - (v) those events or circumstances identified in the AM Services Specification for each AM Services Plan; and
 - (vi) as otherwise specified, and at the times required, in the AM Services Specification.
- (c) No:
 - (i) review of, comments upon, notice in respect of any AM Services Plan or any other act or omission of the Principal's Representative (including a direction under section 2 of Schedule 21 (Project Plans and Asset Management Plans)) about any AM Services Plan;
 - (ii) agreement to the terms of any Asset Management Plan; or

- (iii) compliance by the Asset Manager with its obligations under this clause 9.5 to develop, amend, update and submit to the Principal each AM Services Plan, will lessen or otherwise affect:
 - (iv) the Liabilities or responsibilities of the Asset Manager, whether under this deed or otherwise according to Law; or
 - (v) the Principal's rights against the Asset Manager, whether under this deed or otherwise according to Law.
- (d) The Asset Manager complying with its obligations under this clause 9.5 is not evidence of the Asset Manager complying with its other obligations under this deed.
- (e) The Asset Manager:
 - (i) must comply with each Project Plan which has been submitted to the Principal's Representative under this clause 9.5 and in respect of which the Principal's Representative has not given a notice under section 2 of Schedule 21 (Project Plans and Asset Management Plans);
 - (ii) must comply with each Asset Management Plan which has been agreed with the Principal in accordance with section 3 of Schedule 21 (Project Plans and Asset Management Plans); and
 - (iii) agrees that compliance with any Project Plan or Asset Management Plan will not in any way lessen or affect:
 - (A) the Liabilities or responsibilities of the Asset Manager, whether under this deed or otherwise according to Law; or
 - (B) the Principal's rights against the Asset Manager, whether under this deed or otherwise according to Law.
- (f) To the extent they are relevant to operation, maintenance, repair and reinstatement of the Motorways during the Term, all Project Plans must be incorporated into the Asset Management Plans and the AM Services Documents.
- (g) The Asset Manager warrants that each AM Services Plan:
 - (i) will:
 - (A) contain the contents required by the AM Services Specification;
 - (B) be fit for its intended purpose; and
 - (C) otherwise comply with the requirements of this deed; and
 - (ii) does not infringe any Intellectual Property Rights and any use by the Principal (or any person authorised by the Principal) of that AM Services Plan will not infringe any Intellectual Property Rights.

9.6 Control of traffic

- (a) Before the Asset Manager undertakes any AM Services which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Asset Manager must undertake all matters necessary to carry out such AM Services including:

- (i) obtaining the consent of the Principal, where it is the Motorway which is affected;
 - (ii) obtaining all relevant Approvals (subject to clause 7.2);
 - (iii) preparing and submitting:
 - (A) a traffic control plan for each stage of the AM Services (**Traffic Control Plan**) to the CBD Coordination Office, the TMC and the Principal:
 - (aa) in a timely manner (and in any event at least 25 Business Days prior to the commencement of the AM Services) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Traffic Control Plan prior to the commencement of the services; and
 - (bb) in accordance with Good Industry Practice;
 - (B) applications for a Road Occupancy Licence in accordance with the requirements of the AM Services Specification to the CBD Coordination Office and TMC (with a copy to the Principal):
 - (aa) in a timely manner (and in any event at least 10 Business Days prior to any road occupancy that requires a ROL) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the ROL prior to any road occupancy that requires a ROL;
 - (bb) in accordance with the requirements of the AM Services Specification; and
 - (cc) in accordance with Good Industry Practice;
 - (iv) using all reasonable endeavours in accordance with Good Industry Practice to agree and obtain approved Traffic Control Plans and ROLs;
 - (v) complying with road occupancy requirements, including all Traffic Control Plans and ROLs and paying any relevant lane occupancy fees (other than any Lane Rental Fees, which are governed by section 9 of Schedule 24 (Payment Mechanism)); and/or
 - (vi) accepting and implementing the reasonable requirements of the parties who have input into the approval of the Traffic Control Plans and ROLs.
- (b) The Asset Manager:
- (i) is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the AM Services;
 - (ii) must manage all such traffic to ensure:
 - (A) its continuous, safe and efficient movement;
 - (B) the traffic carrying capacity of Local Areas is maintained; and
 - (C) that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum;

- (iii) must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;
 - (iv) must at all times comply with the traffic management plans prepared in accordance with the Planning Approval and the requirements of the AM Services Specification and any Third Party Agreement in respect of road traffic management and safety;
 - (v) must comply with the directions of any relevant Authority (including the CBD Coordination Office, the TMC, NSW Police and other emergency services and the Principal in its capacity as an Authority) and the Principal's Representative with respect to such management; and
 - (vi) must not apply for any Road Occupancy Licence without the prior written approval of the Principal.
- (c) The Principal must give the public sufficient notice of the arrangements agreed under clause 9.6(a) and in designing and implementing the Traffic Control Plans and all aspects of the AM Services, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the AM Services in accordance with this deed.
- (d) Despite any ROL issued for any lane or shoulder closure, the Principal's Representative may at any time direct the Asset Manager to temporarily suspend any AM Services and to re-open the lane or shoulder.
- (e) For the avoidance of doubt, the Asset Manager will continue to be entitled to the Core Services Payment notwithstanding the suspension of the AM Services due to the Principal's direction under clause 9.6(d) (unless the Principal directs a Change) and the provisions of clause 20 will continue to apply accordingly.

9.7 **Principal contractor**

- (a) In this clause 9.7 and clause 9.8, the terms "principal contractor", "workplace", "construction project" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation.
- (b) For the purposes of the WHS Legislation and this deed, all construction work comprising the AM Services is taken to be part of the same "construction project".
- (c) Without limiting the Asset Manager's obligations under any other provision of this deed, to the extent that:
 - (i) the AM Services performed:
 - (A) during the WHT Delivery Phase as described in section 13 of the AM Services Specification; or
 - (B) during the Asset Management Phase; and
 - (ii) any other work during the Asset Management Phase which is carried out pursuant to clause 17 or the Change Procedure,

(together the **AM Phase Work**) includes construction work:

 - (iii) the Principal engages the Asset Manager as the principal contractor for the AM Phase Work and the Asset Manager is authorised to manage and control

each workplace at which the AM Phase Work is to be carried out under clause 293(2) of the *Work Health and Safety Regulation 2017* (NSW);

- (iv) the Asset Manager agrees that it will exercise and fulfil the functions and obligations of a principal contractor by the WHS Legislation in respect of the AM Phase Work; and
 - (v) the Asset Manager's obligations under this clause 9.7(c) will continue until the termination of this deed (unless directed otherwise by the Principal in writing).
- (d) The Asset Manager must:
- (i) ensure that if any Law, including in the State or Territory in which the AM Services are situated or being carried out (as the case may be) requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed;
 - (ii) not direct or allow a person to carry out work or use plant or a substance at a workplace unless the requirements of clause 9.7(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Principal or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Asset Manager or a Subcontractor (as the case may be) commences such work.

9.8 **Work health and safety**

- (a) The Asset Manager must carry out the AM Services:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) If there is a risk of injury to people or damage to property arising from the AM Services:
 - (i) the Principal's Representative may direct the Asset Manager to change its manner of working or to cease working to minimise that risk; and
 - (ii) the Asset Manager must, at its cost, comply with any direction by the Principal's Representative under clause 9.8(b)(i).

- (c) The Asset Manager must:
- (i) ensure that in carrying out the AM Services under this deed:
 - (A) it complies with all Laws and other requirements of this deed for work, health, safety and rehabilitation management;
 - (B) all Subcontractors and consultants engaged by the Asset Manager comply with their respective obligations under the WHS Legislation; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (ii) have a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and WHS Management Systems and Auditing Guidelines;
 - (iii) exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Maintenance Site;
 - (iv) notify the Principal's Representative immediately (and in any event, within 12 hours after such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the AM Services;
 - (v) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
 - (vi) provide the Principal's Representative with the written assurances referred to in clause 9.8(c)(v), together with written assurances from the Asset Manager about the Asset Manager's ongoing compliance with the WHS Legislation;
 - (vii) provide the Principal's Representative with a written report of all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, clauses 9.7 and 9.8) or any other relevant matters as the Principal's Representative may reasonably require from time to time, including a summary of the Asset Manager's compliance with the WHS Legislation;
 - (viii) cooperate with the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (ix) exercise a duty of utmost good faith to the Principal in carrying out the AM Services to enable the Principal to discharge its duties under the WHS Legislation;
 - (x) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and

- (xi) ensure that each Subcontract includes provisions equivalent to this clause 9.8.
- (d) To the extent not prohibited by Law, the Asset Manager must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
 - (i) the failure of the Asset Manager to exercise or fulfil the functions and responsibilities of the principal contractor under WHS Legislation; or
 - (ii) the Asset Manager's failure to otherwise comply with clauses 9.7 or 9.8.

9.9 **WHS Management Plan**

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

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

9.10 **Site induction**

- (a) Without limiting the Asset Manager's obligations under clause 7.2(b) to comply with the conditions and requirements of all Approvals, the Asset Manager must:

- (i) provide safety and environmental site induction for persons nominated by the Principal's Representative on the Maintenance Site and for all personnel directly or indirectly engaged by the Asset Manager and requiring access to the Maintenance Site, any Extra Land and any other land upon which the AM Services are being carried out; and
 - (ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.
- (b) The induction must:
- (i) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and
 - (ii) otherwise be in accordance with the requirements of this deed.
- (c) The Asset Manager must keep and maintain comprehensive and detailed induction records and provide the Principal's Representative or its nominee, upon request, with access to such records.

9.11 **Community relations**

The Asset Manager:

- (a) acknowledges that the areas where the AM Services are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the AM Services Specification;
 - (ii) contained in the Community and Stakeholder Plan; or
 - (iii) reasonably required by the Principal from time to time.

9.12 **Environmental Requirements**

The parties must comply with the requirements of Schedule 16 (Environmental Requirements).

9.13 **Liability under the NGER Legislation**

- (a) Without limiting any other clause in this deed, the Asset Manager acknowledges and agrees that, if the AM Services or any of the Motorways constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the reporting requirements imposed under the NGER Legislation, it has operational control of that facility or facilities and the Asset Manager will comply with any reporting obligations arising in respect of the AM Services under the NGER Legislation.
- (b) If, despite the operation of clause 9.13(a), the Principal incurs, or but for this clause 9.13 would incur, a Liability under or in connection with the reporting requirements imposed under the NGER Legislation as a result of or in connection with the AM Services as they relate to such reporting requirements and the NGER Legislation provides that such Liability can be transferred by the Principal to the Asset Manager, the Asset Manager must, upon the written request of the Principal, do all things reasonably necessary to transfer the Liability to the Asset Manager.

- (c) If clause 9.13(a) does not apply, the Asset Manager will, and will procure that its Subcontractors will, do everything required to enable the person with operational control of the "facility" which includes the AM Services to comply with its reporting obligations under the NGER Legislation.

9.14 **NGER Legislation Indemnity**

The Asset Manager must at all times indemnify the Principal and its Related Parties from and against any Claim against, or Loss suffered or incurred by the Principal or its Related Parties, arising out of or in connection with any inaccuracy or omission in information provided to the Principal by the Asset Manager in complying with its obligations under clause 9.13 and section 3 of Schedule 16 (Environmental Requirements).

9.15 **Aboriginal participation**

- (a) The Asset Manager acknowledges and agrees that, prior to the Commencement Date, it prepared, submitted to the Principal and obtained the Principal's approval to, an Aboriginal Participation Plan which shows how the Asset Manager intends to meet the Minimum Aboriginal Participation Requirements and is based on the template set out in Schedule 22 (Aboriginal Participation Plan Template).
- (b) The Asset Manager must:
 - (i) comply with, and systematically manage its Aboriginal participation processes in accordance with, the Aboriginal Participation Plan approved by the Principal; and
 - (ii) assist the Principal to comply with the Principal's obligations as an agency under the AP Policy.
- (c) The Asset Manager must prepare and submit to the Principal:
 - (i) each quarter, an Aboriginal Participation Report which provides details of the implementation of the AP Policy and achievement of targets; and
 - (ii) as a condition precedent to Handover, the final Aboriginal Participation Report describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved; and
 - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (d) If the Minimum Aboriginal Participation Requirements have not been met by the Asset Manager prior to the Asset Manager's final Payment Claim, the Principal may direct the remaining balance of the required spend to the "Aboriginal Participation Fund" account held by Training Services NSW.
- (e) To the extent relevant to the AM Services, the Asset Manager must comply with the AP Policy (January 2021). Despite any other provisions of this deed, including clauses 1.2(g) and 7.1, the Asset Manager acknowledges and agrees that the Asset Manager is required to comply with any later or subsequent NSW Government policy or guidelines on Aboriginal procurement or participation in construction.

- (f) The Asset Manager must demonstrate to the Principal whenever requested, that it has met and is meeting at all times its obligations under clauses 9.15(a) to 9.15(e) inclusive.
- (g) The Asset Manager acknowledges that, to the extent relevant to the AM Services, the Principal's Representative may review the Aboriginal Participation Plan:
 - (i) prior to the commencement of the AM Services on the Maintenance Site; and
 - (ii) periodically during the course of the carrying out of the AM Services,
 including by conducting an on-site verification that the Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.

9.16 Heavy Vehicle National Law

- (a) The Asset Manager must, at all times during the term of this deed and without limiting any other provisions of this deed:
 - (i) comply with, and ensure that each Subcontractor complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;
 - (ii) ensure so far as is reasonably practicable, the safety of the Asset Manager's and any Subcontractors' transport activities relating to the use of any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the AM Services; and
 - (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation.
- (b) The Asset Manager must ensure that its personnel, and its Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
 - (i) induction training prior to the commencement of the AM Services; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (c) Where the Asset Manager becomes aware of any suspected, alleged or actual breach by the Asset Manager or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any Construction Plant used in performing the AM Services:
 - (i) promptly give the Principal's Representative a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
 - (ii) otherwise comply with Law and the relevant Project Plans (including the Community and Stakeholder Plan).

- (d) The Principal will have no Liability to the Asset Manager in respect of an order by a court or direction by the Principal's Representative that the Asset Manager cease to perform its obligations under this deed as a result of a suspected, alleged or actual breach of this clause 9.16 or the Heavy Vehicle National Law.

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

- (a) The Asset Manager must in carrying out the AM Services:
 - (i) do all things necessary to minimise the disturbance, nuisance or inconvenience to the occupants of land adjoining the Maintenance Site or located in the vicinity of the Maintenance Site (including Existing Operations and Utility Services);
 - (ii) to the extent reasonably possible in performing the AM Services, not interfere with the free movement of traffic into and out of, adjacent to, around, on or about the Maintenance Site or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, bicycle paths or facilities associated with the Existing Operations and Utility Services and must comply with the Principal's reasonable directions in relation to them; and
 - (iii) program and coordinate the AM Services using best practices so as to minimise the effect of the AM Services on occupants of land adjoining the Maintenance Site or located in the vicinity of the Maintenance Site (including Existing Operations and Utility Services).
- (b) The Asset Manager must, in dealing with customers of the Motorways, stakeholders and other third parties affected by the AM Services (**Stakeholders**):
 - (i) ensure that a representative of the Asset Manager can be contacted by Stakeholders during normal business hours and that the Asset Manager's contact details are publicly available, including on the Asset Manager's website;
 - (ii) give reasonable consideration to all feedback received from Stakeholders; and
 - (iii) actively manage any issues raised by Stakeholders.
- (c) The Asset Manager must immediately notify the Principal if any:
 - (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,by anyone (including any Authority or any landowner, lessee or licensee on or near the Maintenance Site) against the Asset Manager or any of its Related Parties in respect of any aspect of the carrying out of the AM Services, including:
 - (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the AM Services;
 - (v) the Asset Manager's non-compliance with the Planning Approval (or condition or requirement thereunder), any Project Plan or any Law regarding the Environment;
 - (vi) the Asset Manager's use or occupation of the Maintenance Site;

- (vii) Loss or damage of the kind referred to in clause 25.2; or
- (viii) the supply chain for the AM Services, including:
 - (A) any Subcontractors; and
 - (B) the bringing to and removal from the Maintenance Site or any other areas affected by the AM Services of items that require transport services.
- (d) Without limiting the Asset Manager's obligations under section 8.10 of the AM Services Specification, the Asset Manager must (at its own cost):
 - (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clauses 9.17(b) and 9.17(c);
 - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 9.17(c), which:
 - (A) contains full details of:
 - (aa) each complaint, proceedings, letter of demand, order and direction; and
 - (bb) the action taken by the Asset Manager with respect to each complaint, proceedings, letter of demand, order and direction;
 - (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - (C) may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (e) The Asset Manager must notify anyone who may be adversely affected by the AM Services before the relevant work is carried out including notification of:
 - (i) the likely duration of that work; and
 - (ii) the 24 hour telephone number, postal address and email address established by the Principal (or such other number or addresses notified by the Principal to the Asset Manager), in case any person wishes to make a complaint.

9.18 Existing Operations

- (a) The Asset Manager acknowledges that:
 - (i) Existing Operators must not be prevented from continuing their Existing Operations during the course of the carrying out of the AM Services; and
 - (ii) the access ways to the Maintenance Site are used by other persons (including in connection with the Existing Operations) and will not be available exclusively to the Asset Manager.

- (b) The Asset Manager bears the risk of coordinating its access to the Maintenance Site with any other relevant party (including Existing Operators) that uses the access ways to the Maintenance Site.
- (c) Without limiting any other obligations of the Asset Manager under the AM Documents, the Asset Manager must:
 - (i) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Maintenance Site); and
 - (B) work health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to work health and safety;
 - (ii) comply with all reasonable policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
 - (iii) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Maintenance Site; and
 - (iv) immediately:
 - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the AM Services; and
 - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 9.18(c) are complied with.
- (d) The Asset Manager must ensure that its Related Parties at all times comply with this clause 9.18.

9.19 Third Party Agreements

- (a) The Asset Manager:
 - (i) acknowledges that it has reviewed and carefully considered the Third Party Agreements, the forms of which are included in Schedule 20 (Requirements of Third Party Agreements); and
 - (ii) must comply with its obligations in Schedule 20 (Requirements of Third Party Agreements).
- (b) The Asset Manager acknowledges that the Principal may enter into other Third Party Agreements after the Commencement Date and where the Principal requires this clause 9.19 and Schedule 20 (Requirements of Third Party Agreements) to apply to such Third Party Agreements then:
 - (i) the Principal's Representative will provide to the Asset Manager a revised version of Schedule 20 (Requirements of Third Party Agreements) (with such revisions as are reasonable and necessary to reflect such Third Party Agreements); and

- (ii) clause 13.1 will apply as if the Principal had issued a Change Proposal requiring the Asset Manager to comply with the revised version of Schedule 20 (Requirements of Third Party Agreements),

but the Asset Manager will only be required to comply with the revised version of Schedule 20 (Requirements of Third Party Agreements) if the Principal subsequently issues a Change Order. If requested by the Principal, the Asset Manager must provide any of the details contemplated by section 1.2 of the Change Procedure (prepared on the basis contemplated in section 1.3 of the Change Procedure) which are requested by the Principal in connection with a potential Change under this clause 9.19.

9.20 Personnel

- (a) The Asset Manager must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Asset Manager must:
 - (i) employ those personnel specified in section 1 of Schedule 5 (Key Personnel) in the positions specified in section 1 of Schedule 5 (Key Personnel);
 - (ii) ensure that it and its Subcontractors employ those personnel specified in section 2 of Schedule 5 (Key Personnel) in the positions specified in section 2 of Schedule 5 (Key Personnel);
 - (iii) subject to clause 9.20(b)(iv), not replace the personnel referred to in clause 9.20(b)(i) or 9.20(b)(ii) without the Principal's Representative's prior written approval (which must not be unreasonably withheld or delayed); and
 - (iv) if any of the personnel referred to in clause 9.20(b)(i) or 9.20(b)(ii):
 - (A) die;
 - (B) become seriously ill; or
 - (C) resign from the employment of the Asset Manager or resign from the employment of a Subcontractor,replace them, or procure that they are replaced, with personnel of at least equivalent experience, ability, competency and expertise.
- (c) The personnel referred to in clause 9.20(b) (including any replacements) must:
 - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
 - (ii) otherwise be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.

9.21 Workforce skills, diversity and industry participation targets

- (a) The Asset Manager must ensure that the following training and Workforce diversity participation targets are achieved for each Contract Year:
 - (i) ■■■ of the total labour Workforce engaged in the delivery of the AM Services to be made up of "learning workers" (defined as Trainees and workers who need to update their qualifications to meet the needs of the AM Services);

- (ii) [REDACTED] of all Trade Workforce positions for the AM Services to be made up of Apprentices;
 - (iii) [REDACTED] of all Trade Workforce positions for the AM Services to be filled by women; and
 - (iv) [REDACTED] of the total Workforce engaged in the delivery of the AM Services aged less than 25 years.
- (b) The Asset Manager must:
- (i) agree with the Principal, on annual basis, the number of:
 - (A) ANZ SMEs; and
 - (B) Recognised Aboriginal Businesses,

in the Asset Manager's Supply Chain that the Asset Manager must engage under or in connection with this deed and the dates by which the Asset Manager must have put those engagements in place; and
 - (ii) engage the number of ANZ SMEs and Recognised Aboriginal Businesses agreed with the Principal under clause 9.21(b)(i).
- (c) The Asset Manager must prepare and submit to the Principal, each Quarter, a Workforce skills, diversity and industry participation report which provides details of the implementation of programs and initiatives and achievement of targets.
- (d) The Asset Manager must demonstrate to the Principal whenever requested, that it has met and is meeting at all times its obligations under clauses 9.21(a) and 9.21(b).
- (e) The Asset Manager acknowledges that, to the extent relevant to the AM Services, the Principal's Representative may review the Workforce Skills, Diversity & Industry Participation Plan:
- (i) prior to the commencement of the AM Services on the Maintenance Site; and
 - (ii) periodically during the course of the carrying out of the AM Services,
- including by conducting an on-site verification that the Workforce Skills, Diversity & Industry Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.
- (f) The Asset Manager must, as appropriate, include all workforce skills, diversity and industry participation requirements in the selection process for its Subcontractors.

9.22 Engineering Authorisation

Without limiting any other provision of this deed:

- (a) the Principal may, at any time during the Term, notify the Asset Manager that it requires the Asset Manager to qualify as an Authorised Engineering Organisation;
- (b) if the Principal gives notice under clause 9.22(a), the Asset Manager must:
 - (i) qualify as an Authorised Engineering Organisation within 12 months of receiving the Principal's notice;

- (ii) maintain its Authorised Engineering Organisation qualification for so long as the AM Services are carried out; and
- (iii) on and from the date that the Authorised Engineering Organisation qualification is granted, comply (and must ensure that its Subcontractors and all personnel for which the Asset Manager is responsible comply) with the conditions of the Authorised Engineering Organisation qualification.

10. SECURITY

10.1 AM Guarantee

The Asset Manager must procure that prior to AM Close, the Principal is given the executed AM Guarantee (stamped if required by law) from the AM Guarantor.

10.2 Security Bond Requirements

(a) The Asset Manager must provide to the Principal:

- (i) not later than three months before the SHT Handover Date, one or more Security Bonds with an aggregate value of [REDACTED];
- (ii) not later than three months before the commencement of the WHT Mobilisation Phase, one or more additional Security Bonds with an aggregate value such that on that date the Principal holds an aggregate uncalled value of [REDACTED] of the average annual Core Services Payment and [REDACTED] of the average annual Asset Renewal Reserve Amount payable over the Initial Term in Security Bonds;
- (iii) if the Principal exercises its right to extend the Term under clause 4.2(a)(i), not later than three months before the Initial Expiry Date, one or more additional Security Bonds with an aggregate value such that on that date the Principal holds an aggregate uncalled value of [REDACTED] of the average annual Core Services Payment and [REDACTED] of the average annual Asset Renewal Reserve Amount payable over Contract Period 2 in Security Bonds (excluding the uncalled value of any Security Bonds provided under clause 10.2(a)(vi));
- (iv) if the Principal exercises its right to extend the Term under clause 4.2(a)(ii), not later than three months before the tenth anniversary of the Initial Expiry Date, one or more additional Security Bonds with an aggregate value such that on that date the Principal holds an aggregate uncalled value of [REDACTED] of the average annual Core Services Payment and [REDACTED] of the average annual Asset Renewal Reserve Amount payable over Contract Period 3 in Security Bonds (excluding the uncalled value of any Security Bonds provided under clause 10.2(b)(vi));
- (v) if the Principal has issued a notice under clause 5(e)(ii), not later than 12 months before the NTP Termination Date, a Security Bond with an aggregate value equal to [REDACTED] of the estimated value of the works referred to in clause 18.12(b)(i) (as agreed or determined under clause 18.12(b)) following the inspection referred to in clause 18.12(a)(ii)(A); and
- (vi) on or before the date falling 27 months before the Expiry Date, one or more Security Bonds with an aggregate value of [REDACTED] of the Drawdown Cap for the current Contract Period as security for the performance of the works referred to in clause 18.12(d) and the Asset Manager achieving Handover.

(b) Each Security Bond provided under clause 10.2(a) must:

- (i) be in the form of Schedule 27 (Form of Unconditional Undertaking);
 - (ii) be in favour of the Principal;
 - (iii) where required, be duly stamped;
 - (iv) be given by a financial institution acceptable to the Principal that is regulated by the Australian Prudential Regulatory Authority with a credit rating of no less than the Required Rating and regulated by the Australian Prudential Regulatory Authority or as otherwise approved by the Principal in its absolute discretion;
 - (v) be payable at an office of the issuer in Sydney (or such other place as the Principal may approve); and
 - (vi) without limiting any other provision of this deed, have an expiry date of not less than 12 months after the date provided.
- (c) If, at any time during a Contract Period, the sum of the aggregate Core Services Payment and the aggregate Asset Renewal Reserve Amount payable over that Contract Period increases by more than █ (including as a result of cumulative increases of less than █) since the Security Bonds were last provided to the Principal under clause 10.2(a) or this clause 10.2(c) (as the case may be), the Asset Manager must, █ of the relevant Change Order, provide to the Principal replacement or additional Security Bonds (so as to comply with clause 10.2(a)) so that the total amount of Security Bonds then held by the Principal is the amount which would have been required to comply with clause 10.2(a), less amounts drawn to date during that Contract Period.

10.3 Release of Security Bond

- (a) Subject to clauses 10.3(b) and 10.3(c) and to the Principal's rights to have recourse to a Security Bond and to the cash proceeds if the Security Bond is converted into cash, the Principal must within 40 Business Days after the later of:
- (i) the end of the Term;
 - (ii) the date on which the Asset Manager achieves Handover as notified by the Principal under clause 33.3(b)(i);
 - (iii) the completion of the process under clauses 20.13(d) to 20.13(j); and
 - (iv) the resolution of all Disputes,

release the Security Bond provided by the Asset Manager under clause 10.2 (or the remaining proceeds of the Security Bond if it has been converted into cash), provided that where this deed is terminated under clause 30.4, the Principal must release the Security Bond within 10 Business Days of the date of such termination.

- (b) Despite any other provision of this deed to the contrary but subject to clause 10.3(c), where:
- (i) this deed may otherwise require the Principal to release or procure the release of a Security Bond; or
 - (ii) this deed is terminated by the Principal,

the Principal may continue to hold the Security Bond after the date for its release or the termination of this deed to the extent of any claim which the Principal may have

against the Asset Manager arising out of, or in any way in connection with, this deed or the AM Services whether for damages or otherwise.

- (c) If the Expiry Date is extended in accordance with clause 4.2 after the Asset Manager provides a Security Bond to the Principal under clause 10.2(a)(vi), the Principal must return the Security Bond provided under clause 10.2(a)(vi) to the Asset Manager within 10 Business Days of the Principal issuing its notice under clause 4.2.

10.4 **Recourse to Security Bond**

The Principal:

- (a) may, without notice, have recourse to:
- (i) any Security Bond provided under clauses 10.2(a)(i) to 10.2(a)(iv) (inclusive); or
 - (ii) the proceeds of any such Security Bond if it has been converted into cash, where:
 - (iii) the Principal asserts that:
 - (A) amounts are payable by the Asset Manager to the Principal;
 - (B) the Asset Manager is in breach of this deed;
 - (C) the Principal is otherwise entitled to exercise a right under this deed in respect of the Security Bond; or
 - (D) the Principal is entitled to terminate this deed; or
 - (iv) this deed has been terminated;
- (b) may, without notice, have recourse to:
- (i) any Security Bond provided under clause 10.2(a)(vi); or
 - (ii) the proceeds of any such Security Bond if it has been converted into cash, where the Principal asserts that an amount is payable by the Asset Manager under clause 33.2(d) or clause 20.13(h);
- (c) is not obliged to pay the Asset Manager interest on:
- (i) any Security Bond; or
 - (ii) the proceeds of any Security Bond if it has been converted into cash; and
- (d) does not hold the proceeds referred to in clause 10.4(a)(ii) or 10.4(c)(ii) on trust for the Asset Manager.

10.5 **Replacement of Security Bond**

- (a) If the issuer of a Security Bond ceases to have the Required Rating, or ceases to be regulated by the Australian Prudential Regulatory Authority, then the Asset Manager must:
- (i) promptly and within 3 Business Days of the Asset Manager becoming aware of that circumstance, notify the Principal of that circumstance;

- (ii) subject to clause 10.5(a)(iii), within 10 Business Days of being requested to do so by the Principal, procure the issue to the Principal of a replacement Security Bond which satisfies the requirements of clause 10.2 applicable to the relevant Security Bond (subject to any reduction in the amount of an unconditional undertaking in accordance with clause 10.4), provided that, if at that time, 3 of the 4 Major Australian Banks no longer have the Required Rating, the Asset Manager may procure a replacement Security Bond from the Major Australian Bank with the then highest rating below the Required Rating. However, if the conditions applying to such replacement Security Bond are materially different to the Security Bond which it is replacing, the Asset Manager may seek the Principal's consent (not to be unreasonably withheld or delayed) to procure a replacement Security Bond from a foreign bank with a branch in Sydney which has the same rating; and
- (iii) if, at any time after the Asset Manager has procured a replacement unconditional undertaking from a Major Australian Bank which does not have the Required Rating or a foreign bank pursuant to clause 10.5(a)(ii), 3 of the 4 Major Australian Banks have the Required Rating, the Asset Manager must:
 - (A) promptly, and within 2 Business Days of becoming aware of that circumstance, notify the Principal of that circumstance; and
 - (B) within 10 Business Days of becoming aware of that circumstance, procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the affected Security Bond from a Major Australian Bank with the Required Rating which satisfies the requirements of clause 10.2 applicable to the relevant Security Bond and this clause 10.5.
- (b) If the Asset Manager fails to replace a Security Bond as and when required by clause 10.5(a), the Principal may have recourse to the relevant Security Bond and hold the proceeds as cash security until the relevant Security Bond is replaced under clause 10.5(a).
- (c) If the Asset Manager fails to provide additional Security Bonds as required by clause 10.2(a), the Principal may have recourse to any existing Security Bonds which it currently holds and hold the proceeds as cash security until the relevant Security Bonds are provided as required under clause 10.2(a).

10.6 **No injunction**

The Asset Manager must not, and must procure that its Related Parties do not, take any steps to injunct or otherwise restrain:

- (a) any issuer of any Security Bond provided by the Asset Manager under this clause 10 from paying the Principal pursuant to the Security Bond; or
- (b) the Principal from:
 - (i) taking steps for the purposes of making a demand under any Security Bond provided under this clause 10 or receiving payment under any such Security Bond; or
 - (ii) using the proceeds received under any Security Bond provided under this clause 10.

10.7 Replacement of Security Bond upon expiry

- (a) Not later than 2 months prior to the date on which the Security Bond is due to expire, the Asset Manager must procure the issue to the Principal of a replacement Security Bond for the undrawn amount of the Security Bond that it is to replace in a form complying with the requirements of clause 10.2.
- (b) Following receipt of a replacement Security Bond in accordance with clause 10.7(a), the Principal must promptly surrender (or procure the surrender of) the Security Bond that has been replaced.
- (c) If the Asset Manager does not replace a Security Bond in 10.7(a) at least 20 Business Days before it is due to expire, the relevant Security Bond may be drawn down in full by the Principal and the proceeds held as cash security in a separate bank account until such time as the Asset Manager has provided a replacement Security Bond for the amount and in the form required by clause 10.2.
- (d) The parties agree that the provisions of clauses 10.3 to 10.7 will apply in respect of any replacement Security Bond.

10.8 Additional Bonds

Any other bond required to be provided by the Asset Manager under this deed must comply with the requirements in clause 10.2 and clauses 10.3 to 10.7 will apply in respect of such bonds.

11. ACCESS AND MAINTENANCE SITE

11.1 Access

- (a) Subject to clause 9.9(a), Schedule 18 (Terms of Access), any other provision of this deed and the Asset Manager's compliance with clause 25.5, the Planning Approval or any other Approval affecting access to land, the Principal must:
 - (i) on and from the Date of WHT Opening Completion:
 - (A) allow, or ensure that the Asset Manager and its Related Parties and invitees are allowed, access to each such area of the Maintenance Site as is necessary for the proper performance of the AM Services in relation to the WHT Motorway; and
 - (B) give and ensure that the Asset Manager has an ongoing right of access to the WHT Motorway Control Centre, so as to allow it to use an area within the WHT Motorway Control Centre agreed by the Principal in support of the AM Services;
 - (ii) on and from the SHT Handover Date:
 - (A) allow, or ensure that the Asset Manager and its Related Parties and invitees are allowed, access to each such area of the Maintenance Site as is necessary for the proper performance of the AM Services in relation to the SHT Motorway; and
 - (B) give and ensure that the Asset Manager has an ongoing right of access to the SHT TACF, so as to allow it to use an area within the SHT TACF agreed by the Principal for storage, offices and workshop facilities in support of the AM Services;

- (iii) on and from the commencement of the WHT Delivery Phase until the Date of WHT Opening Completion, allow, or ensure that the Asset Manager and its Related Parties and invitees are allowed, access to each such area of the 'Construction Site' (as defined in each Main Works Contract) as is necessary for the proper performance of the AM Services in relation to the WHT Motorway required during the WHT Delivery Phase; and
 - (iv) on and from the commencement of the SHT Mobilisation Phase until the SHT Handover Date, facilitate discussions between the Asset Manager and Sydney Harbour Tunnel Company (as defined in the AM Services Specification) in relation to access to the SHT Motorway required by the Asset Manager to perform its obligations under section 7 of the AM Services Specification during the SHT Mobilisation Phase.
- (b) The Asset Manager acknowledges and agrees that access to the Maintenance Site pursuant to this clause 11.1 and Schedule 18 (Terms of Access) will confer on the Asset Manager a right to such management and control as is necessary to enable the Asset Manager to execute the AM Services in accordance with this deed and discharge its responsibilities under the WHS Legislation.
- (c) The Asset Manager acknowledges and agrees that it is responsible, at its own cost, for securing all rights of ingress to and egress from the Maintenance Site as required to allow it to carry out the AM Services.

11.2 Mitigation

The Asset Manager must take all reasonable steps to Mitigate any delay caused by, or any other effect of, a failure by the Principal to give, or ensure that the Asset Manager has, access to the Maintenance Site pursuant to clause 11.1, including making any reasonable changes to the sequencing or timing of the AM Services.

11.3 Extra Land

- (a) The Asset Manager must:
- (i) procure for itself, at its own cost, the occupation or use of or relevant rights over any land or buildings in addition to the Maintenance Site which are necessary or which it requires for the execution of the AM Services; and
 - (ii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
 - (A) such owner or occupier has not executed a release in the form of Schedule 19 (Property Owner's Certificate); and
 - (B) the claim or Loss arises out of or in connection with the AM Services.
- (b) The Asset Manager acknowledges that:
- (i) if the Asset Manager procures for itself any occupation, use or rights over Extra Land, the Asset Manager is responsible for obtaining any Approval or any modification to an Approval which may be required for that occupation or use or to exercise those rights, including obtaining any modification to the Primary Planning Approval (notwithstanding clause 7.2(b)(i));
 - (ii) integration of the requirements for access to Extra Land is at the sole risk of the Asset Manager; and

- (iii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Asset Manager arising out of or in any way in connection with:
 - (A) identifying and obtaining access to Extra Land;
 - (B) obtaining any Approval or any modification to an Approval (including the Planning Approval) in respect of Extra Land; or
 - (C) any delay, additional costs or other effects on the AM Services related to the ability of the Asset Manager or its Subcontractors to obtain access to Extra Land.

11.4 Access and inspection by the Principal

- (a) The Asset Manager must ensure that at all times the Principal's Representative, any person authorised or nominated by the Principal (including visitors invited by the Principal, who may include existing or prospective contractors, financiers or equity investors, and other contractors and consultants who are to perform work on the Maintenance Site), and the personnel referred to in clause 39.3(b):
 - (i) subject to reasonable safety and security constraints (including compliance with the Asset Manager's reasonable access rules, site induction requirements and safety and security procedures), have safe and convenient access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:
 - (A) the Maintenance Site and Extra Land;
 - (B) all other areas relevant to the AM Services;
 - (C) any documentation created for the purposes of the AM Services; and
 - (D) any information required by the AM Services Specification; and
 - (ii) be entitled to exercise this right of access for the purposes of:
 - (A) observing progress in and inspecting the AM Services and monitoring compliance by the Asset Manager with its obligations under this deed;
 - (B) seeking comments from others in respect of the AM Services; and
 - (C) exercising any right or performing any obligation which the Principal has under any AM Document or any document in connection with the Project.
- (b) The Asset Manager must provide the Principal and the Principal's Representative with every reasonable facility necessary for the inspection of the AM Services.
- (c) If the Principal believes that the AM Services are not being carried out in accordance with the requirements of this deed, the Principal may give notice to the Asset Manager specifying the non-conformance.
- (d) If the Asset Manager disagrees with any notice given by the Principal pursuant to clause 11.4(c), it must within 2 Business Days after receipt of such a notice give notice of its disagreement to the Principal. The Principal and the Asset Manager must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 2 Business Days thereafter, either party may by notice to the other refer the matter for determination under the Dispute Resolution Procedure.

- (e) If the Principal gives a notice under clause 11.4(c) and the Asset Manager does not give a notice under clause 11.4(d) (or if the Asset Manager does give a notice under clause 11.4(d) and it is determined that the AM Services are not being carried out in accordance with the requirements of this deed), the Asset Manager must correct the non-conformance the subject of the notice under clause 11.4(c).
- (f) Neither the Principal, the Principal's Representative, nor any person authorised under clause 11.4(a) owes any duty to the Asset Manager to:
 - (i) inspect the AM Services; or
 - (ii) review any construction, maintenance or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (g) No inspection or review of the AM Services or of any construction, maintenance or repair by the Principal, the Principal's Representative or any person authorised under clause 11.4(a) will in any way lessen or otherwise affect:
 - (i) the obligations or warranties of the Asset Manager under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Asset Manager, whether under this deed or otherwise according to Law.

11.5 Conditions

- (a) Without limiting clause 11.6(b), the Asset Manager warrants and for all purposes it will be deemed to be the case that, prior to the Commencement Date, the Asset Manager has:
 - (i) examined the AM Documents, the Maintenance Site and its surroundings, and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Asset Manager for the purpose of submitting a proposal for the AM Services;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its proposal for the AM Services and its obligations under the AM Documents;
 - (iii) satisfied itself as to the correctness and sufficiency of its proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the AM Documents and of all matters and things necessary for the due and proper performance and completion of the AM Services;
 - (iv) informed itself of:
 - (A) all matters relevant to the employment of labour at the Maintenance Site; and
 - (B) all industrial matters relevant to the Maintenance Site and the AM Services;
 - (v) been given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of the Information Documents;
 - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of the AM

Documents, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its proposal, the performance of its obligations and its potential Liabilities under the AM Documents; and

- (vii) undertaken sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the AM Documents and assume the obligations and potential risks and Liabilities which they impose on the Asset Manager.
- (b) Without limiting or otherwise affecting clauses 11.5(c), 11.5(d) or 11.6, the Principal makes no representation and gives no warranty to the Asset Manager in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the AM Services or otherwise in respect of the condition of:
 - (A) the Maintenance Site, Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Maintenance Site or the Extra Land; or
 - (ii) the existence, location, condition or availability of any Existing Operations or Utility Service on, under, above, adjacent to or related to the Maintenance Site or the Extra Land; and
 - (iii) the physical and performance characteristics of:
 - (A) the Main Works; or
 - (B) the SHT Motorway, the DT Motorway, and (once constructed) the WHT Motorway.
- (c) Subject to clause 11.9, clause 17.1 and clause 17.2, the Asset Manager accepts:
- (i) the Maintenance Site and any Extra Land; and
 - (ii) any structures or other things on, above or adjacent to, or under the surface of, the Maintenance Site and any Extra Land,
- in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
 - (iv) any adverse effect on the AM Services,
- arising out of, or in any way in connection with, the Site Conditions encountered in performing the AM Services.
- (d) Subject to clause 11.9, clause 17.1 and clause 17.2, the Asset Manager must perform the AM Services in accordance with this deed and acknowledges that it will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing the AM Services;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:

- (A) the Maintenance Site, any Extra Land, the Environment or their surroundings;
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Maintenance Site, any Extra Land, the Environment or their surroundings;
 - (C) the Main Works; or
 - (D) the SHT Motorway, the DT Motorway or (once constructed) the WHT Motorway; and
- (iii) any assumptions, projections, estimates, contingencies or otherwise that the Asset Manager may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 11.5(d)(ii).

11.6 Information Documents

- (a) The parties acknowledge that, prior to the Commencement Date, the Asset Manager signed a Procurement Process Deed Poll and provided it to the Principal in respect of information (including Information Documents) provided by the Principal to the Asset Manager.
- (b) Without limiting or otherwise affecting clause 11.6(c):
 - (i) the Principal does not warrant, guarantee or assume any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of the Information Documents;
 - (ii) whether or not an Information Document or any part thereof forms a schedule to this deed, the Asset Manager acknowledges that:
 - (A) the Information Document or part thereof does not form part of this deed and that clause 11.6(c) applies to the Information Document or part thereof; and
 - (B) where an Information Document or any part thereof forms a schedule to this deed, it does so only for the purposes of identification of that document or part thereof;
 - (iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the Asset Manager or any Subcontractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Asset Manager or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any information to the Asset Manager.
- (c) The Asset Manager:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the Asset Manager by the Principal or anyone on

behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

- (B) the accuracy, adequacy, suitability, currency, fitness for purpose, reasonableness, reliability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out the AM Services but nothing in this clause 11.6(c)(i) will limit or otherwise affect the Asset Manager's obligations under this deed;

(ii) warrants that it:

- (A) or anyone it provides the Information Documents to, has sufficient expertise to understand the risks involved with any decision to enter into or perform any of the Asset Manager's obligations under this deed; and
- (B) enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and

(iii) acknowledges that:

- (A) the Information Documents do not form the basis for the Asset Manager's decision to enter into this deed;
- (B) the Information Documents do not purport to contain, or be, all of the information that an interested party may require in order to make any decision to enter into this deed or perform any of the Asset Manager's obligations under this deed; and
- (C) it is aware that the Principal has entered into this deed relying upon:
 - (aa) the warranties, acknowledgements and agreements in clause 11.6(c)(i) and 11.6(c)(ii); and
 - (bb) the warranties and acknowledgements in the Procurement Process Deed Poll submitted by the Asset Manager.

(d) To the maximum extent permitted by Law, the Asset Manager:

(i) releases and indemnifies the Principal from and against:

- (A) any Claim against the Principal by, or Liability of the Principal to, any person; or
- (B) (without being limited by clause 11.6(d)(i)) any Loss suffered or incurred by the Principal,

arising out of or in any way in connection with:

- (C) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Asset Manager or any other person to whom the Information Documents are disclosed by the Asset Manager or a failure by the Principal to provide any information to the Asset Manager; or

- (D) the Information Documents being relied upon or otherwise used by the Asset Manager or its Related Parties in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).

11.7 **Artefacts**

- (a) As between the Principal and the Asset Manager, any Artefacts found on or under the surface of the Maintenance Site are the property of the Principal.
- (b) The Asset Manager must upon the discovery of any Artefact on or under the surface of the Maintenance Site:
 - (i) at its cost, immediately notify the Principal's Representative that an Artefact has been found;
 - (ii) at its cost, ensure that the Artefact is protected and not disturbed any further;
 - (iii) comply with all requirements of Authorities and Directions of the Principal's Representative in relation to the Artefact; and
 - (iv) continue to perform the AM Services except to the extent otherwise:
 - (A) directed by the Principal's Representative;
 - (B) ordered by a court or tribunal; or
 - (C) required by Law.
- (c) For the avoidance of doubt, the Asset Manager will continue to be entitled to the Core Services Payment notwithstanding any suspension or cessation of the AM Services due to the discovery of an Artefact (unless the Principal directs a Change) and the provisions of clause 20 will continue to apply accordingly.

11.8 **Native Title Claim**

- (a) If there is a Native Title Claim with respect to the Maintenance Site, or any part of it, the Asset Manager must continue to perform its obligations under this deed unless otherwise:
 - (i) directed by the Principal;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.
- (b) For the purposes of clause 11.8(a)(i), the Principal may by notice direct the Asset Manager to suspend any or all of its obligations under this deed and the Asset Manager must comply with that notice until such time as the Principal gives the Asset Manager further notice.
- (c) For the avoidance of doubt, the Asset Manager will continue to be entitled to the Core Services Payment notwithstanding any suspension or cessation of the AM Services due to a Native Title Claim (unless the Principal directs a Change) and the provisions of clause 20 will continue to apply accordingly.

11.9 **Contamination**

- (a) If the Asset Manager discovers any Contamination or potential Contamination in, on or under the Maintenance Site or the Extra Land (whether or not the Asset Manager or its Related Parties have caused or contributed to that Contamination), it must:
 - (i) notify the Principal immediately of the discovery of the Contamination or potential Contamination; and
 - (ii) give any notice required by Law.
- (b) The Asset Manager must comply, and ensure that its Related Parties comply, with any Contamination Notice relating to Contamination referred to in clause 11.9(e), regardless of whether:
 - (i) the Contamination Notice is addressed to the Principal, the Asset Manager or some other person; or
 - (ii) the Contamination occurred before or after the Asset Manager or its Related Parties were given access to the relevant land.
- (c) If the Principal, the Asset Manager or any other person receives a Contamination Notice (other than a Contamination Notice relating to Contamination referred to in clause 11.9(e)), the Principal must either:
 - (i) direct the Asset Manager to provide the Principal and any person authorised by the Principal with such access to the Maintenance Site and the Extra Land as is required to enable the Principal to comply with that Contamination Notice, in which case the Asset Manager must promptly comply with the Principal's direction; or
 - (ii) propose a Change in accordance with section 1 of the Change Procedure to require the Asset Manager to comply with that Contamination Notice.
- (d) Subject to their respective obligations at Law, the parties must not do anything with the intent, directly or indirectly, of causing or being likely to cause the service of a Contamination Notice.

■ [Redacted text]

(i) [Redacted text]

■ [Redacted text]

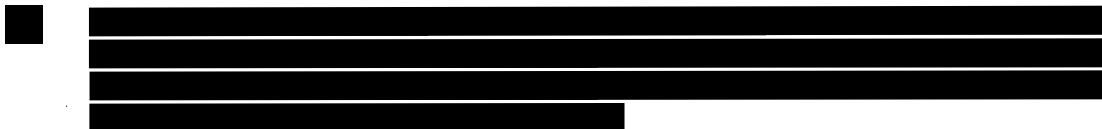
■ [Redacted text]

■ [Redacted text]

■ [Redacted text]

■ [Redacted text]

- (f) To the extent clause 11.9(e)(i)(B) or clause 11.9(e)(ii)(B) applies, the Asset Manager must:
 - (i) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Planning Approval; and
 - (ii) remediate the Maintenance Site and any Extra Land to the standard required by Law and the Planning Approval to the extent to which:
 - (A) it is in any way degraded by such Contamination; and
 - (B) the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated.



- (h) The parties acknowledge and agree that in interpreting the requirement that the Maintenance Site be remediated to the standard required by Law, the uses that the Maintenance Site must be suitable for are the uses contemplated in this deed (including the uses contemplated in the Main Works SWTCs, the AM Services Specification and the Planning Approval).

11.10 Principal access for works or upgrades

- (a) The Asset Manager acknowledges and agrees that, notwithstanding any other provision of this deed or any other AM Document, the Principal may, at its absolute discretion, access the Maintenance Site (or permit a third party to access the Maintenance Site) for any purpose at any time during the Term in accordance with this clause 11.10.
- (b) The Principal must give the Asset Manager at least 45 Business Days' prior written notice of the Principal's intention to carry out any works on any part of the Maintenance Site or carry out any upgrade to any of the Motorways under clause 11.10(a), including details of:
 - (i) the works or upgrade that the Principal proposed to carry out on the Maintenance Site;
 - (ii) any access to the Maintenance Site that the Principal will require to carry out the proposed works or implement any upgrade to the Motorways;
 - (iii) any traffic adjustments within or adjacent to the Maintenance Site proposed by the Principal in connection with those works (if any) or implementation of any upgrade to the Motorways;
 - (iv) any Change that the Principal proposes; and
 - (v) any other matter that the Principal considers is relevant to the works or upgrade proposed by the Principal.
- (c) The Principal must, in carrying out any works or upgrade under this clause 11.10:
 - (i) coordinate all activities associated with the construction and installation of any works or upgrade on the Maintenance Site;

- (ii) use reasonable endeavours to minimise any interference with the operation, maintenance and use of the Motorways; and
 - (iii) not damage, destroy or interfere with the Maintenance Site or any of the Motorways other than as agreed.
- (d) The Asset Manager must cooperate with the Principal during the carrying out of any works or upgrade under this clause 11.10.
 - (e) The Principal will notify the Asset Manager in writing which aspects of any works or upgrade to any of the Motorways will form part of the relevant Motorway upon completion of those works or that upgrade.
 - (f) The Asset Manager must not damage, destroy or interfere with any such works or upgrade which remain the property of the Principal.
 - (g) If the Principal proposes a Change under clause 11.10(b)(iv), section 1 of the Change Procedure will apply.
 - (h) If the Principal issues a notice to the Asset Manager under clause 11.10(e), such notice will be deemed to be a Change Proposal and section 1 of the Change Procedure will apply.

11.11 **Asset Manager to vacate SHT TACF**

The Asset Manager must complete its obligations in relation to the SHT TACF as contemplated under section 13.2 of the AM Services Specification and in accordance with the Motorway Control Centre Transition Plan by no later than the date falling [REDACTED] after the date that access to the WHT Motorway Control Centre is first provided to the Asset Manager.

12. **ACCESS TO INFORMATION**

- (a) Without limiting any other provision of this deed:
 - (i) the Principal may at any time notify the Asset Manager that it requires access to any information held by the Asset Manager which relates to the AM Services;
 - (ii) upon receipt of a notice under clause 12(a)(i), the Asset Manager must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
 - (iii) the Principal (and any person authorised by the Principal) may review, copy, retain or otherwise deal with such information.
- (b) The Asset Manager acknowledges that the Principal may require information pursuant to this clause 12 to facilitate the procurement of other contracts as part of the Project (including the Main Works Contracts) or other projects, or to provide to an existing or prospective financier or equity investor in the Project or other projects.

13. **CHANGES**

13.1 **Either party may propose a Change**

- (a) The Principal may require the Asset Manager to carry out a Change:

- (i) **(Change Proposal or Change Order)** in accordance with section 1 of the Change Procedure;
 - (ii) **(Additional Services)** in accordance with section 4 of the Change Procedure.
- (b) The Asset Manager may propose a Change to the Principal in accordance with section 2 of the Change Procedure.

13.2 Not Used

13.3 Payment for Changes

- (a) If a Change directed by the Principal under:
- (i) section 1.4(b) of the Change Procedure results in Change Costs, the Asset Manager will be entitled to payment of the Change Costs set out in the relevant Asset Manager Change Notice, as accepted by the Principal;
 - (ii) section 1.7(b) of the Change Procedure results in Change Costs, the Asset Manager will be entitled to payment of the Change Costs set out in the relevant Asset Manager Change Notice, as varied by the parties' agreement under section 1.7(b) of the Change Procedure;
 - (iii) section 1.7(e)(i) of the Change Procedure results in Change Costs, the Asset Manager will be entitled to payment of the Change Costs set out in the relevant Asset Manager Change Notice, as varied by the determination under section 1.7(e) of the Change Procedure; and
 - (iv) section 5 of the Change Procedure results in Change Costs, the Asset Manager will be entitled to payment of the Change Costs set out in the Principal's notice under section 5(f)(i) of the Change Procedure.
- (b) If the Principal directed the Asset Manager to proceed to implement the Change under section 1.7(d) or section 1.9 of the Change Procedure, the Principal must pay the Asset Manager the Change Costs:
- (i) as reasonably determined by the Principal, pending determination by the Principal pursuant to section 1.7(d) of the Change Procedure, agreement between the parties or determination in accordance with the Dispute Resolution Procedure; and
 - (ii) following any determination referred to in clause 13.3(b)(i) (or agreement between the parties), as so determined (or agreed),

progressively within 15 Business Days after each month in which the relevant Change Costs are incurred. If the Change Costs paid under clause 13.3(b)(i) are more or less than the Change Costs for the relevant month as subsequently determined or agreed, the difference must be paid by the relevant party to the other.

- (c) If a Change directed by the Principal under:
- (i) section 1 of the Change Procedure results in Change Savings, the Principal is entitled to receive █████ of the Change Savings, subject to section 1.1(b) of the Change Procedure;
 - (ii) section 2.3 of the Change Procedure:
 - (A) before the commencement of the WHT Delivery Phase results in Change Savings, the Principal is entitled to receive the greater of:

- (aa) the actual Change Savings; and
- (bb) the estimated Change Savings (as advised by the Asset Manager under section 2.2(a)(iii) of the Change Procedure),

which would have been paid between the date of the Change Order and the Initial Expiry Date; or

- (B) after the commencement of the WHT Delivery Phase results in Change Savings, the Principal is entitled to receive [REDACTED] of the greater of:

- (aa) the actual Change Savings; and
- (bb) the estimated Change Savings (as advised by the Asset Manager under section 2.2(a)(iii) of the Change Procedure),

which would have been paid during the remainder of the Contract Period in which the Change Order is issued; and

- (iii) section 5 of the Change Procedure results in Change Savings, the Principal will be entitled to receive [REDACTED] of the Change Savings.

- (d) Without limiting clause 20.3(d), where an amount is payable to the Principal pursuant to clause 13.3(c), this may be set-off against Change Costs payable by the Principal under clause 13.3(a) or otherwise under clause 20.4.

- (e) If a Change is directed by the Principal under clause 13.1(a)(ii), the Principal must pay the Asset Manager the applicable Additional Services Payment in accordance with section 4 of the Change Procedure and Schedule 24 (Payment Mechanism).

- (f) Except where the Asset Manager is directed to carry out a Change pursuant to a Change Order or section 4 of the Change Procedure, the Principal will not be liable to the Asset Manager for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

- (g) The Principal will comply with the terms of any Change Order which adjusts the Asset Renewal Reserve Amounts.

13.4 **Asset Manager's entitlements**

This clause 13 is an exhaustive code of the Asset Manager's rights in any way in connection with any Change. The Asset Manager waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 13 otherwise than in accordance with the terms of this deed.

13.5 **Approvals for Changes**

- (a) Subject to clause 13.5(b), the Asset Manager must apply for and obtain all:
 - (i) necessary amendments or modifications to any existing Approvals; and
 - (ii) new Approvals that may be,
required for the execution of a Change.
- (b) Where the amendment or modification to any Approval required for the execution of the Change relates to the Planning Approval, clauses 7.3, 7.4 and 7.4A will apply.

- (c) The Asset Manager must implement the Change once the Approvals referred to in this clause 13.5 have been amended, modified or granted to permit the Change to be implemented.

14. REIMBURSABLE SERVICES

- (a) The Asset Manager must, to the extent possible, perform any Reimbursable Services:
 - (i) firstly, using the Asset Manager's Personnel having regard to the experience and expertise of the Asset Manager's Personnel and any relevant industrial awards and agreements that the Asset Manager may have with the Asset Manager's Personnel; and
 - (ii) secondly, to the extent the Asset Manager's Personnel are unable to perform those Reimbursable Services, using external advisors, consultants, subcontractors and suppliers appointed by the Asset Manager on reasonable terms, which are approved by the Principal.
- (b) To the extent that the Asset Manager's Personnel can provide Reimbursable Services within the time required by this deed, without any overtime or other excess payments being required, then the Principal will not be required to pay the Asset Manager for those Reimbursable Services.
- (c) To the extent that the Asset Manager's Personnel can provide Reimbursable Services within the time required by this deed, but at an increased cost of labour to the Asset Manager (such as overtime) then the Principal will pay those increases as part of the Actual Costs in consideration of the Asset Manager providing those Reimbursable Services in an efficient manner.
- (d) To the extent that Reimbursable Services cannot be provided by the Asset Manager's Personnel, and the Asset Manager needs to use external advisors, consultants, subcontractors or suppliers, the Principal will pay the Asset Manager the Actual Costs of those persons for those Reimbursable Services.
- (e) The Asset Manager must use all reasonable efforts in accordance with Maintenance Best Practices to minimise the Actual Costs of the Reimbursable Services.
- (f) The Asset Manager must, in respect of any amount claimed for performance of a Reimbursable Service during a Month, include in the relevant Payment Claim all supporting evidence and other records relating to the Asset Manager's Actual Costs of performing such Reimbursable Service on an Open Book Basis and calculated with regard to any relevant rates and prices in Schedule 24 (Payment Mechanism), or if there are no relevant rates and prices in Schedule 24 (Payment Mechanism), reasonable rates and prices (**Supporting Records**). The Asset Manager must not include the cost of any activities, resources or other things which are Core Services as part of any amount claimed as a Reimbursable Services Payment.

15. MAIN WORKS INTERFACE

15.1 Review of Main Works Tenderer Proposal Documents

- (a) The Principal may provide those Main Works Tenderer Proposal Documents which the Principal considers are relevant for the performance of the Asset Manager's obligations under this clause 15.1 to the Asset Manager for review following receipt of any such Main Works Tenderer Proposal Documents from a Main Works Tenderer, in a manner and at a rate which will give the Asset Manager a reasonable opportunity to review the provided Main Works Tenderer Proposal Documents in accordance with this clause 15.1.

- (b) The Asset Manager must review the Main Works Tenderer Proposal Documents provided under clause 15.1(a) in accordance with sections 5.3.3 and 5.3.4 of the AM Services Specification.

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

15.2 Review of Main Works Design Documents

- (a) The Principal must provide Main Works Design Documents to the Asset Manager for review promptly following receipt of any Main Works Design Documents from a Main Works Contractor.
- (b) Within [REDACTED] of receipt of any Main Works Design Document from the Principal in accordance with clause 15.2(a) (or such longer period as agreed by the Principal's Representative), the Asset Manager must provide the Principal with written notice setting out:
 - (i) the Asset Manager's comments on the matters specified in section 6.2.2 of the AM Services Specification; and

- (ii) in respect of any changes to the relevant Main Works Design Documents since the last version of those Main Works Design Documents reviewed by the Asset Manager (**Main Works Design Change**), the Asset Manager's assessment of:
 - (A) the likely impact (if any) of the Main Works Design Change on the performance of the AM Services during the Asset Management Phase;
 - (B) whether a Change will, or is likely to, be required as a consequence of the Main Works Design Change, and if so:
 - (aa) details of the proposed Change;
 - (bb) details of any changes that the Asset Manager considers could be made to the Main Works Design Documents in order to reduce or avoid the impact of the proposed Main Works Design Change on the performance of the AM Services; and
 - (cc) the Asset Manager's estimate of the likely impact on the Core Services Payment plus the Asset Renewal Reserve Amount over the Term if the Main Works Design Change were to be implemented (including sufficient details of how such impact has been calculated), together with an updated version of the WHT LCC Model.
- (c) The Asset Manager acknowledges and agrees that the Principal may (in its absolute discretion and without being under any obligation to do so):
 - (i) provide the comments submitted by the Asset Manager under clause 15.2(b) to the Main Works Contractor and an Independent Certifier as part of the design review process under the relevant Main Works Contract; and
 - (ii) require the Asset Manager to attend and contribute to design review meetings and design development workshops.
- (d) If the Asset Manager's notice under clause 15.2(b) indicates that a Change will, or is likely to, be required as a consequence of the Main Works Design Change, section 5 of the Change Procedure will apply.

15.3 Main Works Variations

- (a) Promptly following receipt of any proposal for a Main Works Variation from a Main Works Contractor, the Principal must provide that proposal for a Main Works Variation to the Asset Manager for review.
- (b) Within [REDACTED] of receipt of any proposal for a Main Works Variation from the Principal in accordance with clause 15.3(a) (or such longer period as agreed by the Principal's Representative), the Asset Manager must provide the Principal with written notice setting out:
 - (i) the Asset Manager's comments on the matters required by the AM Services Specification; and
 - (ii) the Asset Manager's assessment of:
 - (A) the likely impact (if any) of the proposed Main Works Variation on the performance of the AM Services;

- (B) whether a Change will, or is likely to, be required as a consequence of the proposed Main Works Variation, and if so:
 - (aa) details of the proposed Change;
 - (bb) details of any changes that the Asset Manager considers could be made to the proposed Main Works Variation in order to reduce or avoid the impact of the proposed Main Works Variation on the performance of the AM Services; and
 - (cc) the Asset Manager's estimate of the likely impact on the Core Services Payment and the Asset Renewal Reserve Amount over the Term if the proposed Main Works Variation were to be directed by the Principal under the relevant Main Works Contract (including sufficient details of how such impact has been calculated), together with an updated version of the WHT LCC Model.
- (c) The Asset Manager acknowledges and agrees that the Principal may (in its absolute discretion and without being under any obligation to do so) provide the comments submitted by the Asset Manager under clause 15.3(b) to the Main Works Contractor in accordance with the relevant Main Works Contract.
- (d) If the Asset Manager's notice under clause 15.3(b) indicates that a Change will, or is likely to, be required as a consequence of the proposed Main Works Variation, section 5 of the Change Procedure will apply.

15.4 Main Works As-Built Documentation

- (a) Promptly following receipt of any Main Works As-Built Documentation from a Main Works Contractor, the Principal must provide that Main Works As-Built Documentation to the Asset Manager for review.
- (b) Within 20 Business Days of receipt of any Main Works As-Built Documentation from the Principal in accordance with clause 15.4(a) (or such longer period as agreed by the Principal's Representative), the Asset Manager must provide the Principal with written notice setting out:
 - (i) any differences between the Main Works As-Built Documentation and the final iteration of the relevant Main Works Design Documents which were provided to the Asset Manager under clause 15.2(a) (excluding any difference which resulted from a Main Works Variation the subject of a notice from the Asset Manager under clause 15.3(b)) (**Main Works As-Built Change**); and
 - (ii) the Asset Manager's assessment of:
 - (A) the likely impact (if any) of the Main Works As-Built Change on the performance of the AM Services during the Asset Management Phase;
 - (B) whether a Change will, or is likely to, be required as a consequence of the Main Works As-Built Change, and if so:
 - (aa) details of the proposed Change; and
 - (bb) the Asset Manager's estimate of the likely impact on the Core Services Payment plus the Asset Renewal Reserve Amount over the Term if the Main Works As-Built Change were to be implemented (including sufficient details of how such impact has

been calculated), together with an updated version of the WHT LCC Model.

- (c) If the Asset Manager's notice under clause 15.4(b) indicates that a Change will, or is likely to, be required as a consequence of the Main Works As-Built Change, section 5 of the Change Procedure will apply.

16. **WHT OPENING COMPLETION**

16.1 **No entitlement for delayed WHT Opening Completion**

- (a) Subject to clause 16.2(b) and any adjustment to the AM Services Payment contemplated by Schedule 24 (Payment Mechanism):
 - (i) failure by the Main Works P2 Contractor to achieve WHT Opening Completion by the expected Date of WHT Opening Completion does not create any entitlement for the Asset Manager to claim for any amount, and the Principal does not have to pay any amount to the Asset Manager under this deed to the extent that those amounts would not have arisen had the Main Works P2 Contractor achieved WHT Opening Completion by the expected Date of WHT Opening Completion; and
 - (ii) if the Main Works P2 Contractor accelerates the Main Works under the Main Works P2 Contract, the Asset Manager must accelerate the AM Services as is necessary to comply with its obligations under this deed.
- (b) The Asset Manager must coordinate with the Main Works P2 Contractor to ensure that it obtains from the Main Works Contractors the plant and equipment that the Main Works Contractors are required to provide to enable the Asset Manager to carry out its obligations to perform the AM Services in accordance with this deed.

16.2 **Notice of delayed or accelerated WHT Opening Completion**

- (a) The Principal will use its best endeavours to provide the Asset Manager with [REDACTED] notice of any anticipated delay to or acceleration of the expected Date of WHT Opening Completion.
- (b) The Principal may, at any time prior to the Date of WHT Opening Completion, notify the Asset Manager of a delay to the anticipated Date of WHT Opening Completion, in which case section A.4(d) of Schedule 24 (Payment Mechanism) will apply.

17. **DEFECTS CORRECTION**

17.1 **Correction of Defects**

- (a) The Asset Manager must:
 - (i) if the Asset Manager discovers or believes there is a Defect, immediately give notice to the Principal;
 - (ii) correct all Other Defects in accordance with the AM Services Specification; and
 - (iii) comply with its obligations under the Main Works P2 Interface Deed in relation to the coordination with the Main Works P2 Contractor in respect of the rectification of Main Works Defects.
- (b) Without limiting clause 17.1(a), if the Principal discovers or believes (acting reasonably) there is an Other Defect, the Principal may, without prejudice to any

other rights which the Principal may have under this deed or otherwise at Law, give the Asset Manager a written direction specifying the Other Defect and requiring the Asset Manager to correct the Other Defect (or the relevant part of the Other Defect) and specifying a reasonable time within which this must occur.

- (c) If the Asset Manager disagrees with any direction given by the Principal under clause 17.1(b) and considers that the Defect is a Main Works Defect or is not an Other Defect, then it must give notice of its disagreement to the Principal as soon as practicable (and in any event within 3 Business Days after receipt of the Principal's notice). The Principal may then, based on the Principal's fair and genuine assessment of the Defect's nature, by notice to the Asset Manager:
 - (i) agree that the Defect is a Main Works Defect and seek that the relevant Main Works Contractor rectifies the Main Works Defect under the relevant Main Works Contract or engage a third party to rectify the Main Works Defect;
 - (ii) agree that the Defect is not an Other Defect and request that the Asset Manager rectify, overcome or address the Defect as an Additional Service, unless the Asset Manager does not have the technical capability to rectify the Defect; or
 - (iii) state that the Defect is an Other Defect, and if the Asset Manager still considers that the Defect is not an Other Defect, it may refer the matter for dispute resolution under the Dispute Resolution Procedure.
- (d) If it is agreed or determined that the Defect is:
 - (i) a Main Works Defect, then unless the Principal issues a notice under clause 17.1(c)(ii):
 - (A) the Asset Manager will not be liable for the rectification of the Main Works Defect; and
 - (B) the Principal will either procure the relevant Main Works Contractor to rectify the Main Works Defect in accordance with the relevant Main Works Contract or engage a third party to rectify the Main Works Defect;
 - (ii) an Other Defect, the Asset Manager must rectify the Other Defect; or
 - (iii) not an Other Defect or not a Defect, then the Asset Manager will not be liable for rectification of the alleged Defect.
- (e) Where clause 17.1(c)(iii) applies, the Principal may direct the Asset Manager to rectify, overcome or address the Defect in advance of the resolution of the Dispute under that clause as an Additional Service. The Asset Manager must comply with that direction unless it considers (acting reasonably) that it does not have the technical capability to rectify the Defect.
- (f) If the Asset Manager rectifies, overcomes or addresses the Defect in accordance with 17.1(e) and it is subsequently determined that the Defect was an Other Defect, then the amounts paid by the Principal to the Asset Manager for carrying out the rectification work or overcoming or addressing the Defect will be a debt due and payable by the Asset Manager to the Principal.
- (g) If the Asset Manager disagrees with any direction given by the Principal under clause 17.1(b) and considers the alleged Defect is not a Defect, then it must within 3 Business Days after receipt of such a notice give notice of its disagreement to the

Principal. The Principal and the Asset Manager must use reasonable endeavours to resolve the matter the subject of the disagreement.

- (h) If the matter is not resolved within 10 Business Days after the date of the Asset Manager's notice, either the Principal or the Asset Manager may, by notice to the other, refer the matter for determination under section 5 of the Dispute Resolution Procedure, except that the time for the expert to make a determination will be 10 Business Days. If it is determined that the alleged Defect the subject of the dispute is not a Defect, then the Asset Manager will not be liable for rectification of the alleged Defect.
- (i) If the Principal directs the Asset Manager to correct an Other Defect under clause 17.1(b) prior to the expiration of the Term and the Asset Manager does not dispute that the Defect is an Other Defect under clause 17.1(c), or, if it does, the result of the determination under the Dispute Resolution Procedure is that an Other Defect exists, the Asset Manager must correct the Other Defect (or the relevant part of the Other Defect):
 - (i) within the time specified in the Principal's direction;
 - (ii) at times agreed with the Principal and in accordance with the requirements of any other relevant Authority;
 - (iii) so as to minimise the impact on the use of the relevant part of that Motorway;
 - (iv) so as to minimise the inconvenience to possible users of that Motorway or any access and the adjacent community; and
 - (v) in accordance with the requirements of any relevant Authority.
- (j) The Asset Manager must give notice to the Principal that a Defect has been corrected promptly after the correction of the Defect.

17.2 Correction of Main Works Defects by a Main Works Contractor

The Asset Manager must give the relevant Main Works Contractor or any other person nominated by the Principal safe and convenient access to the Maintenance Site for the purpose of the relevant Main Works Contractor or such other nominated person rectifying Main Works Defects, including in accordance with the provisions of the Main Works P2 Interface Deed.

17.3 Failure by the Asset Manager to comply with direction

If the Asset Manager fails to comply with a direction given under clause 17.1(b) which it is required to comply with under this deed, the Principal may (without limiting any other rights it may have including under clause 8.5) apply for a court order for specific performance.

17.4 Rights not affected

Neither the Principal's rights, nor the Asset Manager's liability, whether under this deed or otherwise according to law in respect of Defects, whether before or after the expiration of the Term, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal by this clause 17 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal to exercise, any such rights; or
- (c) any direction of the Principal under this clause 17.

17.5 **Temporary fixes**

Nothing in this clause 17 limits the operation of sections 8.6.5(f) to (h) (inclusive) of the AM Services Specification.

17.6 **Liability for Defects**

Nothing in this clause 17 limits the liability of the Asset Manager in respect of Defects caused or contributed to by an act or omission of, or breach of this deed by, the Asset Manager.

18. **OPERATION, MAINTENANCE AND REPAIR**

18.1 **General obligation**

(a) Without limiting the Asset Manager's obligations under this clause 18:

- (i) on and from the Date of WHT Opening Completion until the Expiry Date, the Asset Manager must operate, maintain and repair the WHT Motorway; and
- (ii) on and from the SHT Handover Date until the Expiry Date, the Asset Manager must:
 - (A) operate, maintain and repair the SHT Motorway; and
 - (B) operate the DT Motorway,

so that:

- (iii) subject to clause 18.2, all traffic lanes of the Motorways (including all exits and entries) are at all relevant times during the Term open to the public for the safe, efficient and continuous passage of vehicles;
- (iv) the Asset Manager satisfies the requirements of clause 18.13 in respect of the Motorways;
- (v) the performance or non-performance of the AM Services does not cause or contribute to any failure of the WHT Motorway to remain fit for its intended purposes;
- (vi) Defects are corrected as soon as possible; and
- (vii) the requirements of the Planning Approval (except any condition of the Planning Approval that the Asset Manager is not required to comply with pursuant to Part B of Schedule 15 (Approvals)) are at all times met to the extent applicable to the AM Services.

(b) The Asset Manager must, at its own cost, carry out all work necessary or desirable to enable the obligations specified in clause 18.1(a) to be fulfilled.

18.2 **Obligation to keep Motorways open**

(a) The Asset Manager must, subject to clause 18.2(c):

- (i) on and from the Date of WHT Opening Completion, keep all traffic lanes of the WHT Motorway (including all exits and entries); and
- (ii) on and from the SHT Handover Date, keep all traffic lanes of the SHT Motorway and the DT Motorway (including all exits and entries),

open to the public for the safe, efficient and continuous passage of vehicles except to the extent:

- (iii) it has been authorised to close the relevant Motorway or a traffic lane of the relevant Motorway under a Road Occupancy Licence granted by the Principal in accordance with section 8.5.10 of the AM Services Specification, or the Principal otherwise consents in writing; or
- (iv) it is necessary to close the relevant Motorway or a traffic lane of the relevant Motorway as a result of:
 - (A) the requirements of any Law or relevant Authority which have the effect of Law and which necessitate the closing of the Motorway or a traffic lane of the Motorway;
 - (B) the occurrence of a Force Majeure event which prevents the safe passage of vehicles;
 - (C) a material threat to the health or safety of the public;
 - (D) maintenance of and/or repairs to a Motorway carried out in accordance with this deed, including the AM Services Specification;
 - (E) access by the Principal or any person authorised by the Principal in accordance with clause 21.2 or clause 18.14; or
 - (F) traffic management measures required to respond to congestion or Incidents in the road network surrounding the Motorways in accordance with protocols agreed in writing by the Principal and the Asset Manager.
- (b) If the Asset Manager closes or proposes to close any part of a Motorway for any reason whatsoever, the Asset Manager must promptly notify the Principal specifying the reasons for such closure.
- (c) The Asset Manager must comply with any traffic direction or instruction given by an Authority, the Principal or the TMC in respect of any traffic control proposal, including any direction to the Asset Manager to re-open any traffic lane or shoulder to traffic without delay.

18.3 Performance of AM Services

- (a) Without limiting clause 18.1, in performing the AM Services, the Asset Manager must:
 - (i) comply with the approved Asset Management Plans and Project Plans;
 - (ii) during the WHT Delivery Phase, provide a qualified and experienced design team that works collaboratively with the Principal throughout the design of the Main Works;
 - (iii) ensure that only trained and suitably experienced personnel are engaged in respect of the AM Services;
 - (iv) comply with Maintenance Best Practices and for this purpose develop, implement and continuously improve maintenance standards and systems to reflect Maintenance Best Practices, including performance and intervention standards, appropriate response times and management and control systems;

- (v) keep the WHT Motorway, the SHT Motorway and any maintenance plant clean and tidy and regularly remove from any place where the AM Services are being performed any waste or surplus material arising from such performance;
- (vi) act in a timely and expeditious manner;
- (vii) once it has commenced any AM Services, proceed with the AM Services with due expedition and without delay and must take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other AM Services) to minimise any disruption to, or compromise of the safety of, the users of the Motorways;
- (viii) minimise the impact of the performance of the AM Services on motorists and other users of the Motorways;
- (ix) perform the AM Services using good workmanship and materials which are fit for their intended purposes;
- (x) manage all interface requirements in connection with the AM Services with all relevant stakeholders;
- (xi) during the Initial Asset Management Phase:
 - (A) ensure that the SHT Motorway is inspected and maintained in a manner and at a frequency that ensures that the requirements of this deed are met;
 - (B) undertake condition monitoring of the Assets forming part of the SHT Motorway in accordance with section 8.6.4 of the AM Services Specification; and
 - (C) remove any systems, equipment or parts which have become redundant, as agreed between the Principal and the Asset Manager; and
- (xii) during the Asset Management Phase:
 - (A) ensure that the Assets are inspected and maintained in a manner and at a frequency that ensures that the requirements of this deed are met;
 - (B) undertake condition monitoring of the WHT Motorway and SHT Motorway in accordance with section 8.6.4 of the AM Services Specification;
 - (C) permit third party access to the WHT Motorway for the installation and maintenance of conduits and telecommunications cables; and
 - (D) remove any systems, equipment or parts which have become redundant, as agreed between the Principal and the Asset Manager; and
- (xiii) if, in the performance of the AM Services during the Asset Management Phase, it is required to replace any damaged, worn, failed or defective parts, use replacement parts which:
 - (A) are of equal quality to those required under this deed, including as a minimum installing assets in the WHT Motorway which have a design life of at least the specified design life in the Main Works SWTC;

- (B) provide a functionality and performance which satisfies the AM Services Specification;
 - (C) comply with all applicable Laws; and
 - (D) are fit for their intended purpose.
- (b) If any damage is caused by the Asset Manager, its employees, agents or contractors or any employee of an agent or contractor in the performance of the AM Services to any property or Utility Service, the Asset Manager must promptly make good the damage at its own cost and pay any compensation payable in connection with the damage.
 - (c) Upon completion of any AM Services, the Asset Manager must promptly and in a good and workmanlike manner remove all temporary protection measures installed in connection with the AM Services.

18.4 **AM Services Documents and Asset Information System**

- (a) The Asset Manager must develop and maintain the AM Services Documents at all times during the Term in accordance with the requirements of this deed and the AM Services Specification.
- (b) The Asset Manager must ensure that the O&M Manuals and Asset Management Plans are part of the AM Services Documents. The Asset Manager must comply with the requirements for the O&M Manuals and the Asset Management Plans, and maintain a compliance and traceability matrix which enables the contents of the O&M Manuals and Asset Management Plans to be readily located within the AM Services Documents. The Asset Manager must provide the O&M Manuals and the Asset Management Plans to the Principal and the Independent Certifier at any time requested by the Principal.
- (c) The AM Services Documents must contain the contents required by the AM Services Specification.
- (d) The Principal owes no duty to the Asset Manager to review the AM Services Documents or any draft submitted by the Asset Manager for errors, omissions or compliance with this deed.
- (e) No review of, comments upon, or notice given in respect of the AM Services Documents or any draft or any other act or omission of the Principal in respect of the AM Services Documents or any draft will lessen or otherwise affect:
 - (i) the Asset Manager's Liabilities or responsibilities under this deed or otherwise according to law; or
 - (ii) the Principal's rights against the Asset Manager, whether under this deed or otherwise according to law.
- (f) The Asset Manager warrants that:
 - (i) on the Date of WHT Opening Completion, the AM Services Documents in respect of the Motorways will be fit for their intended purposes; and
 - (ii) compliance with the AM Services Documents will enable it, during the Term, to fulfil its obligations under this deed.
- (g) The Asset Manager:

- (i) must comply with the AM Services Documents as submitted to the Principal in accordance with the AM Services Specification; and
- (ii) agrees that compliance by it with the AM Services Documents will not in any way lessen or affect:
 - (A) its Liabilities or responsibilities under this deed or otherwise according to law; or
 - (B) the Principal's rights against it, whether under this deed or otherwise according to law.
- (h) The Asset Manager must provide all data in relation to the AM Services as is required to maintain the accuracy of the information in the Asset Information System, and otherwise comply with its obligations under the AM Services Specification in relation to the Asset Information System.

18.5 **Control of the Motorways**

Despite any other provision of this deed, the control of the operation of the Motorways given to the Asset Manager under this deed is subject to:

- (a) management of the Motorways by TMC and the Principal that will, as a routine matter, control the flow of traffic onto and off the Motorways;
- (b) the control rights reserved for TMC under clause 18.6 of this deed; and
- (c) any other direction of the Principal or TMC.

18.6 **Reserved control rights**

- (a) The Asset Manager acknowledges that control of each of the Motorways and of the traffic connections to each of the Motorways will pass to TMC if traffic diversions, restrictions, road or lane closures or urgent repairs are necessary as a result of:
 - (i) the occurrence of a Force Majeure event which prevents the safe passage of vehicles through a Motorway;
 - (ii) a material threat to the health or safety of the public;
 - (iii) access by the Principal or any person authorised by the Principal in accordance with clause 21.2; and
 - (iv) traffic management measures required to respond to congestion or Incidents in the road network surrounding the Motorways in accordance with protocols agreed in writing by the Principal and the Asset Manager.
- (b) The Asset Manager must co-operate with, comply with all directions issued by, and do all other things necessary to assist, TMC in carrying out the above.

18.7 **Inspection**

The Principal, its employees and agents (including any subcontractors and their employees) may, at any time during the Term, enter during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) the Maintenance Site and the Motorways to inspect and observe the operation, maintenance and repair of the Motorways or to exercise any right or perform any obligation which the Principal has under any AM Document.

18.8 **Changes to Motorways**

Subject to clause 13, the Asset Manager must:

- (a) not make (or permit to be made) any:
 - (i) structural changes to the Motorways; or
 - (ii) changes to the Motorways which are inconsistent with or outside the requirements of the AM Services Specification or the Asset Management Plans, without the Principal's prior written approval (which approval must be given to the extent that the change is required in order for the Asset Manager to comply with the Law); and
- (b) promptly notify the Principal of:
 - (i) any event, circumstance or change which has occurred (or is likely to occur) which could affect the functionality or integrity of the Motorways; or
 - (ii) any other change made to the Motorways.

18.9 **Advertising signage**

- (a) Except as directed by the Principal, the Asset Manager must not (at any time during the Term) erect, install, paint, transmit or display any advertising, promotional or similar signage or material on, in or near any part of the Motorways (or permit any third party to do so).
- (b) However, this clause 18.9 will not prevent the Asset Manager from installing and maintaining operational directional signage which is specified in the AM Services Specification (but on the basis that the Asset Manager obtains all other necessary Approvals in respect of such signage).

18.10 **Fixtures, fittings and equipment**

The Asset Manager must ensure that all dedicated equipment used by it in connection with the Motorways, will be:

- (a) owned by the Asset Manager with an option in favour of the Principal to acquire title to them upon expiry or termination of this deed; or
- (b) the subject of an agreement with an option in favour of the Principal to acquire title to them at net written down value at the end of the term of such agreement, and that the Principal will pay any costs associated with acquiring the relevant leases and the transfer of title, including any applicable stamp duty.

18.10A **Free issue equipment**

- (a) On or before the SHT Handover Date, the Principal will give notice to the Asset Manager describing any plant, equipment, materials, machinery, goods, spares or other items which the Principal intends to provide to the Asset Manager on or before the SHT Handover Date (**Free Issue Equipment**).
- (b) On or before the SHT Handover Date, the Principal will make available the Free Issue Equipment to the Asset Manager at the Maintenance Site.
- (c) The Asset Manager:

- (i) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Free Issue Equipment; and
 - (ii) is not relieved from, and remains liable for complying with, all of its obligations under this deed despite the Principal making available the Free Issue Equipment.
- (d) The *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under this clause 18.10A and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Free Issue Equipment.

18.11 Notice of damage and accidents

- (a) The Asset Manager must promptly give the Principal a detailed written report of:
- (i) from the SHT Handover Date until the Date of WHT Opening Completion:
 - (A) any material damage to or Defect or disrepair in the SHT Motorway or the DT Motorway of which it is aware;
 - (B) the action which the Asset Manager recommends to correct that material damage, defect or disrepair, and the estimated time that correction will require; and
 - (C) any Incidents or other accidents involving material damage or injury which occur on the SHT Motorway or the DT Motorway of which it is aware; and
 - (ii) from the Date of WHT Opening Completion until the end of the Term:
 - (A) any material damage to or Defect or disrepair in any of the Motorways of which it is aware;
 - (B) the action which the Asset Manager recommends to correct that material damage, defect or disrepair, and the estimated time that correction will require; and
 - (C) any Incidents or other accidents involving material damage or injury which occur on a Motorway of which it is aware.
- (b) If the Asset Manager provides or is required to provide a report to the Principal in accordance with clause 18.11(a), the Asset Manager must thereafter take the action recommended in that report in accordance with, and to the extent of, its obligations under clause 25.9 and provide any additional information reasonably requested by the Principal in respect of the subject matter of such report.

18.12 Obligations prior to Expiry Date

- (a) The Asset Manager must, if required by the Principal, carry out joint inspections of:
- (i) the Motorways at a mutually convenient time:
 - (A) 18 months prior to the Expiry Date; and
 - (B) 3 months prior to the Expiry Date; or
 - (ii) if the Principal issues a notice to the Asset Manager under clause 5(e)(ii), the SHT Motorway at a mutually convenient time:

- (A) 18 months prior to the NTP Termination Date; and
 - (B) 3 months prior to the NTP Termination Date.
- (b) Following each inspection under clause 18.12(a), the parties will seek to reach agreement on:
- (i) the maintenance and repair works required to meet the requirements of clause 18.13 which are in addition to the maintenance or repair works scheduled to be carried out by the Asset Manager between the date of the inspection and the Expiry Date or the NTP Termination Date (as applicable) as part of the AM Services;
 - (ii) a programme for the carrying out of those works by the Asset Manager; and
 - (iii) an estimate of the costs of carrying out those works (by reference to the WHT LCC Model for the WHT Motorway).
- (c) If the parties fail to reach agreement on any of the matters referred to in clause 18.12(b) within 30 Business Days after the date of the relevant joint inspection then the Principal may refer the matters in dispute for resolution in accordance with clause 31.
- (d) The Asset Manager must carry out the works agreed or determined under clause 18.12(b) in accordance with the programme agreed or determined pursuant to clause 18.12(b)(ii).
- (e) Without limiting any other provision of this deed, during the period 12 months prior to the Expiry Date or the NTP Termination Date (as applicable), or at any time upon receipt of a written notice from the Principal, the Asset Manager must:
- (i) provide the Principal and its nominees with access to all records relating to the operation and maintenance of the Motorways;
 - (ii) provide the Principal and its nominees with access to inspect and assess all Assets (including systems and software);
 - (iii) provide the Principal and its nominees with access to all supply and subcontract arrangements (including utilities) and provision of assistance to the Principal or its nominee in negotiating transfer of arrangements to the Principal when so requested; and
 - (iv) nominate, and make available, a suitable, experienced person to act as the primary interface between the Asset Manager and the Principal and/or its nominees throughout the completion of all requirements for Handover.
- (f) During the final 3 months of the Term, the Asset Manager must train the Principal (or other) personnel as nominated by the Principal in all aspects of the operation, maintenance and repair of the Motorways to a level of competency that will allow those personnel to manage, operate, maintain and repair the Motorways so that the obligations specified in clause 18.1 can be fulfilled after the Expiry Date or the NTP Termination Date (as applicable).

18.13 Handover

- (a) The Asset Manager must achieve Handover on the Expiry Date or earlier termination of this deed.
- (b) As conditions precedent to Handover:

- (i) the Asset Manager must ensure that the Assets are in a state and condition which complies with the requirements of this deed, including:
 - (A) the Handover Condition;
 - (B) if this deed is terminated under clause 30.10, the NTP Handover Condition; or
 - (C) if this deed is terminated prior to the Expiry Date for any other reason, the Termination Handover Condition;
- (ii) the Asset Manager must provide the final Aboriginal Participation Report in accordance with clause 9.15(c)(ii);
- (iii) the Asset Manager must transfer ownership to the Principal or its nominee of all plant and equipment owned by it or in respect of which it has an option to acquire title and required for the AM Services;
- (iv) the Asset Manager must:
 - (A) replenish the inventory of Spare Parts in accordance with section 8.6.6 of the AM Services Specification;
 - (B) supply to the Principal all Spare Parts and special tools necessary for the continued operation, maintenance and repair of the Motorways after the expiry of the Term for a period of 12 months; and
 - (C) transfer all of the Asset Manager's rights, title and interest (if any) in the Spare Parts to the Principal or the Principal's nominee free from any Security Interests; and
- (v) the Asset Manager must complete the works required under clause 18.12(d).
- (c) It is a condition precedent to Handover that the Asset Manager must complete the following to the reasonable satisfaction of the Principal:
 - (i) complete the training referred to in clause 18.12(f) (except where this deed is terminated prior to the Expiry Date for any reason other than a termination under clause 30.10);
 - (ii) do all reasonable things, execute relevant documents and provide the Principal with reasonable assistance, information, forms, templates and documents to enable the Principal, or any other party appointed by the Principal, to transition to the performance of the AM Services in an orderly manner;
 - (iii) collate and handover all maintenance data recorded on the Asset Information System (in a format acceptable to the Principal);
 - (iv) use its reasonable endeavours to transfer to the Principal or its nominee the benefit of any contracts that the Asset Manager is party to with a third party to perform any part of the AM Services;
 - (v) deliver to the Principal, and not retain any copies of, all material forms of the Principal's confidential information in the possession or control of the Asset Manager or its representatives;
 - (vi) transfer to the Principal, or its nominee, all supplier warranties and guarantees;

- (vii) deliver to the Principal a statutory declaration made by an authorised officer of the Asset Manager declaring that neither it nor its representatives, officers or employees have any material forms of the Principal confidential information in their possession or control;
- (viii) provide the Principal with access to interface arrangements; and
- (ix) perform any other relevant obligations set out in the AM Services Plans or the AM Services Specification.

18.14 **Cableways**

- (a) The Asset Manager acknowledges that the Motorways may include cableways for the accommodation of the Principal's or a third party's cables and associated equipment.
- (b) The Asset Manager must not use or permit the cableways to be used other than as directed by the Principal.
- (c) The Principal and any person authorised by the Principal may enter the Maintenance Site during business hours or on reasonable notice (except in the case of an emergency when no notice will be required) for the purposes of installing, maintaining, repairing, removing, inspecting and operating cables and associated equipment in or from the cableways, provided they use their best endeavours to minimise any disruption to the Asset Manager's operations and comply with the Asset Manager's (or its contractor's) reasonable occupational health and safety requirements.

18.15 **Security**

- (a) The Asset Manager must provide such security measures as are necessary for the protection and security of the Motorways and the AM Services against theft, vandalism, unauthorised entry into the Motorways or the Maintenance Site and any other unlawful acts.
- (b) The Asset Manager must cooperate with Authorities, including NSW Police and other emergency services, in preparing for and responding to Incidents and security or safety exercises.

18.16 **Training management**

The Asset Manager must:

- (a) satisfy its obligations as a contractor under the Training Management Guidelines;
- (b) prepare a Training Management Plan and submit the Training Management Plan to the Principal in accordance with the AM Services Specification;
- (c) comply with the Training Management Plan the Asset Manager is permitted to use in accordance with clause 9.5(d);
- (d) co-operate with and assist the Principal with any reviews undertaken by the Principal of the Asset Manager's compliance with the Training Management Guidelines;
- (e) maintain records evidencing the Asset Manager's compliance with the Training Management Guidelines and Training Management Plan; and
- (f) make available all records maintained in accordance with clause 18.16(e) to the Principal.

18.17 SHT Initial Condition Report

- (a) The parties acknowledge and agree that:
 - (i) before the Commencement Date, the Principal provided the SHT Initial Condition Report to the Asset Manager; and
 - (ii) the Core Services Payment and Asset Renewal Reserve Amount in respect of the SHT Motorway have been agreed on the assumption that the condition of each SHT Asset at the SHT Due Diligence Date is consistent with the SHT Initial Condition Report.
- (b) On or before the SHT Due Diligence Date, the Asset Manager may prepare and submit a report to the Principal which:
 - (i) identifies each SHT Asset which the Asset Manager reasonably considers to be a Deficient SHT Asset;
 - (ii) in respect of each alleged Deficient SHT Asset, sets out detailed particulars of:
 - (A) the adverse effect that the Asset Manager reasonably anticipates the alleged Deficient SHT Asset will have on the Asset Manager's ability to perform the AM Services in connection with the SHT Motorway (including specific details of the work that will be affected and how and to what extent it will be affected) (**Deficient SHT Asset Effect**);
 - (B) the Asset Manager's proposed increase in the Core Services Payment and/or Asset Renewal Reserve Amount over the Initial Term for the carrying out of any Deficient SHT Asset Works or otherwise required as a direct result of the alleged Deficient SHT Asset Effect, which must:
 - (aa) be based on the rates set out in Schedule 24 (Payment Mechanism), where relevant;
 - (bb) where reasonably requested by the Principal, be substantiated (to the full extent possible) with a detailed breakdown;
 - (C) the scope of any major repair, refurbishment, rehabilitation or replacement that the Asset Manager reasonably considers should be carried out to overcome the alleged Deficient SHT Asset Effect (**Deficient SHT Asset Works**); and
 - (D) the Asset Manager's proposed amendments to the SHT Asset Management Plans, including its program for carrying out any Deficient SHT Asset Works.
- (c) The Asset Manager must provide the Principal's Representative with any information reasonably requested in relation to an alleged Deficient SHT Asset.
- (d) Within 120 Business Days after the Asset Manager submits the SHT Due Diligence Report, the Principal will notify the Asset Manager that:
 - (i) the Principal accepts the SHT Due Diligence Report; or
 - (ii) the Principal does not accept all or part of the SHT Due Diligence Report, setting out the elements of the SHT Due Diligence Report with which the Principal disagrees and the basis for such disagreement.

- (e) Within 20 Business Days after the Principal gives notice under clause 18.17(d)(ii), the Asset Manager must either:
- (i) notify the Principal that it accepts the Principal's notice under clause 18.17(d)(ii); or
 - (ii) if the Asset Manager does not accept all or part of the Principal's notice under clause 18.17(d)(ii), give notice of its disagreement to the Principal, setting out the elements of the notice with which the Asset Manager disagrees and the basis for such disagreement.
- (f) If the Asset Manager gives notice under clause 18.17(e)(ii), the Principal and the Asset Manager must use reasonable endeavours to resolve the matters the subject of the disagreement. If the matter is not resolved within 20 Business Days thereafter (or such longer period as the parties may agree), either party may by notice to the other directly refer the matter for expert determination under section 5 of the Dispute Resolution Procedure, provided that the outcome of the expert determination will be final and binding unless fraud or manifest error is evident on the face of the expert determination.
- (g) The Principal will issue a Change Order under section 1.9 of the Change Procedure in respect of the Deficient SHT Asset Effects and the Deficient SHT Asset Works within 20 Business Days of:
- (i) the Principal giving notice under clause 18.17(d)(i);
 - (ii) the Asset Manager giving notice under clause 18.17(e)(i); or
 - (iii) all matters that are the subject of disagreement under this clause 18.17 being resolved in accordance with clause 18.17(f) or otherwise determined in accordance with the Dispute Resolution Procedure,
- and if the aggregate increase in the SHT Funding over the Initial Term required as a direct result of the alleged Deficient SHT Asset Effect (as agreed or determined) is equal to or greater than [REDACTED] (excluding GST), then within 120 Business Days thereafter, the Principal may, subject to clause 18.17(h), direct the Asset Manager to carry out any Deficient SHT Asset Works as an Additional Service in accordance with section 4 of the Change Procedure.
- (h) The Change Order issued under clause 18.17(g) will be issued on the basis that any increase in the Core Services Payment, or payment of Actual Costs plus AM Margin for any Deficient SHT Asset Works:
- (i) will be reduced by [REDACTED] (excluding GST); and
 - (ii) will be capped at [REDACTED] (excluding GST).
- (i) If the Principal directs a third party to undertake any part of the Deficient SHT Asset Works, any Defect in those Deficient SHT Asset Works not caused or contributed to by the Asset Manager will be deemed to be a Main Works Defect.
- (j) The Asset Manager releases the Principal from any Claim under this clause 18.17, and the Principal is not required to take any further action under this clause 18.17, if:
- (i) the Asset Manager fails to submit a SHT Due Diligence Report to the Principal on or before the SHT Due Diligence Date; or

- (ii) the amount referred to in clause 18.17(b)(ii)(B) as claimed by the Asset Manager in the SHT Due Diligence Report or determined and agreed in accordance with this clause 18.17 is less than [REDACTED] (excluding GST).
- (k) The Asset Manager acknowledges and agrees that the Principal will have no liability to the Asset Manager, nor will the Asset Manager be entitled to make any Claim against the Principal, arising out of or in connection with the condition of any Asset forming part of the SHT Motorway at the SHT Due Diligence Date, other than as set out in this clause 18.17.

19. REPORTING AND NOTICES

19.1 Accounting and financial reporting

- (a) The Asset Manager must keep proper books of account and all other records relating to the AM Services.
- (b) The Asset Manager must have its accounts relating to the AM Services audited annually.
- (c) The Asset Manager must ensure that its respective books of account and records referred to in clause 19.1(a) are available to the Principal on an Open Book Basis at all reasonable times for examination, audit, inspection, transcription and copying.
- (d) Without limiting its obligations under clause 30, if this deed is terminated, the Asset Manager must give the Principal all books of account and records referred to in clause 19.1(a) which are necessary for the continued operation, maintenance and repair of the Motorways.
- (e) The Principal must give the Asset Manager access to any books of account or records given to the Principal by the Asset Manager for a period of 7 years, after the date on which such books of account or records were given to the Principal under clause 19.1(d).
- (f) The Asset Manager must, throughout the Term, give to the Principal the reports required by Appendix B of the AM Services Specification in the format and at the frequency specified in Appendix B of the AM Services Specification.
- (g) The Asset Manager must give to the Principal:
 - (i) copies of all documents or information given to or received by it from the Australian Securities and Investments Commission or ASX Limited (if applicable) which relate to the AM Services promptly after the information is first given or received;
 - (ii) a Monthly Operational Management Report; and
 - (iii) such other information relating to the AM Services as the Principal may reasonably require from time to time.

19.2 Copies of notices

Each party must provide to the other party, as soon as practicable, certified copies of all material notices received by it under the AM Documents from any of its co-contracting parties in order that the other party is kept informed at all times of any material developments which could have a serious effect upon a party's rights pursuant to any of the AM Documents.

19.3 **Advice regarding rights**

Each party undertakes to advise the other party as soon as practicable after an event has occurred which to a party's actual knowledge could in any way materially prejudice the other party's rights under this deed by reason of the legitimate exercise of significant rights available to third parties arising from the AM Documents.

20. **PAYMENTS**

20.1 **AM Services Payment**

- (a) The Principal will pay the Asset Manager the AM Services Payment in accordance with Schedule 24 (Payment Mechanism) and the other terms of this deed.
- (b) Other than the AM Services Payment, the Principal will pay any payment that is due and payable to the Asset Manager, and the Asset Manager will pay any payment that is due and payable to the Principal at the time specified in this deed or the relevant AM Documents for the particular payment.

20.2 **Lane Rental Fees as only monetary compensation**

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

20.3 **Payment claims**

- (a) On the 5th day of each Month that the Asset Manager delivers a monthly performance report (the **Monthly Performance Report**) for the preceding Month, the Asset Manager must prepare and provide to the Principal a Payment Claim for the AM Services Payment for that preceding Month calculated in accordance with Schedule 24 (Payment Mechanism), and any other amounts then due and payable by the Principal or the Asset Manager in accordance with this deed.
- (b) The Payment Claim must be accompanied by executed statements in the form of Schedule 29 (NSW Subcontractor's Statement) and Schedule 30 (NSW Supporting Statement).
- (c) The Principal will, within 10 Business Days after receipt by the Principal of a Payment Claim provide to the Asset Manager a statement (**Payment Statement**) stating the amount payable to or by the Asset Manager (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference in the amount in the Payment Claim.
- (d) If the Asset Manager does not issue a Payment Claim or Monthly Performance Report the Principal may still issue a Payment Statement setting out the amount payable to or by the Asset Manager.
- (e) Without limiting the Asset Manager's right to dispute the amount for payment stated in the Payment Statement, the Asset Manager must provide to the Principal a tax invoice in connection with any supplies the subject of the Payment Statement for the amount stated in the Payment Statement within 1 Business Day of receipt of the Payment Statement.
- (f) Subject to clause 20.4, payment of the amount stated to be payable to or by the Asset Manager in the Payment Statement will be made by the Principal to the Asset Manager or by the Asset Manager to the Principal (as the case may be) within 15 Business Days of the date of the Payment Claim provided in accordance with clause 20.3(a).
- (g) The payment of the AM Services Payment by the Principal to the Asset Manager and the issuing of any Payment Statement is not evidence that the AM Services have been carried out by the Asset Manager and the issuing of any Payment Statement is not evidence that the AM Services have been carried out by the Asset Manager in accordance with the AM Documents, or an admission of Liability, and is only to be taken as payment on account.
- (h) The Principal may, in any Payment Statement, correct any error in any previous Payment Statement issued by the Principal.

20.4 **Set-off**

- (a) The Principal may set-off or deduct from any moneys due to the Asset Manager:
 - (i) any debt or other moneys due from the Asset Manager to the Principal; and
 - (ii) any bona fide claim to any money which the Principal may have against the Asset Manager, whether for damages or otherwise,whether under the AM Documents or otherwise at Law relating to the Project.
- (b) The Asset Manager must make all payments due to the Principal under the AM Documents without set-off or counterclaim, and without any deduction to the extent permitted by law.

- (c) Nothing in this clause 20.4 affects the Principal's right to recover from the Asset Manager the whole of the debt or any balance that remains owing after any set-off.

20.5 Performance assessment and Reporting

- (a) During the Initial Asset Management Phase and the Asset Management Phase, the Asset Manager must prepare and include a Monthly Performance Report as an appendix to the Monthly Progress Report required to be submitted under Appendix B of the AM Services Specification setting out the level of the Asset Manager's performance of the AM Services, for the immediately preceding Month, which must include (in addition to matters required by the AM Services Specification) full details of the following:
 - (i) any KPI Event;
 - (ii) any Lane Rental Event;
 - (iii) in connection with any such KPI Event or Lane Rental Event (as the case may be), details of each of the following:
 - (A) the nature, date, time, extent and duration of the KPI Event or Lane Rental Event;
 - (B) the specific location of the KPI Event or Lane Rental Event;
 - (C) if applicable, the required date and time of rectification and the actual date and time of rectification of the KPI Event or Lane Rental Event;
 - (D) relevant traffic volume data; and
 - (E) for a KPI Event, the actual Performance Requirement set out in Schedule 24 (Payment Schedule) for the relevant KPI;
 - (iv) the total of any Lane Rental Fees in respect of Lane Rental Events calculated under Schedule 24 (Payment Mechanism), including a detailed breakdown of how these amounts were calculated;
 - (v) any amounts in connection with which the Asset Manager should not be liable for Lane Rental Fees (including reasons), under section 9 of Schedule 24 (Payment Mechanism); and
 - (vi) any other information that the Principal reasonably requires in relation to the calculation of the AM Services Payment or any Lane Rental Fee,(collectively, the **Performance Data**).
- (b) Within 5 Business Days following the end of each Month, the Asset Manager must prepare and deliver to the Principal a Monthly Progress Report for that Month (including the Monthly Performance Report).
- (c) Within 8 Business Days following the end of each Quarter, the Asset Manager must prepare and deliver to the Principal a quarterly report (**Quarterly Performance Report**) which consolidates the information contained in each of the Monthly Performance Reports prepared by it for the relevant Quarter.
- (d) The Asset Manager must certify that each Performance Report is accurate, complete and correct.
- (e) The Asset Manager must:

- (i) subject to the Principal providing reasonable prior notice, give the Principal and (to the extent reasonably required) its Associates the Performance Data, the Performance Source Data, the Monthly Progress Reports, the Quarterly Performance Reports and any information related to the calculation of the AM Services Payment or any Lane Rental Fee under Schedule 24 (Payment Mechanism):
 - (A) at all reasonable times; and
 - (B) if requested by the Principal, via an online portal;
 - (ii) ensure the availability and continuous integrity of the Performance Data and the Performance Source Data;
 - (iii) ensure that all Performance Data and the Performance Source Data is not amended or deleted without the Principal's prior consent; and
 - (iv) ensure that the Performance Data and the Performance Source Data is accurate and keep a copy of all Performance Data and the Performance Source Data for 7 years.
- (f) The Asset Manager must, in addition to the other requirements of this clause 20.5, maintain (in electronic format) a log for recording the start and end times and any other information requested by the Principal from time to time.
- (g) The Asset Manager must provide to the Principal, within 28 Business Days of the end of each Financial Year from the Date of WHT Opening Completion until the end of the Term, an audit report, prepared by an independent and reputable auditor, who has audited the Performance Data and the Performance Reports for that Financial Year.
- (h) At any time up to 36 months after the end of any Contract Year, the Principal may give notice to the Asset Manager requiring an audit of the Performance Data, the Performance Reports, the calculation of any amounts under Schedule 24 (Payment Mechanism) (or any of them) in connection with that Contract Year to verify their accuracy (**Performance Audit Notice**).
- (i) If the Principal gives the Asset Manager a Performance Audit Notice:
- (i) the Principal will appoint and notify the Asset Manager of a person appointed to conduct the audit (**Performance Auditor**), at the Principal's cost and on terms reasonably determined by the Principal, which notice the Principal must promptly provide to the Asset Manager; and
 - (ii) the Asset Manager must, within a reasonable period, make the Performance Data, the Performance Reports and any information related to the calculation of any amounts under Schedule 24 (Payment Mechanism) available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the Performance Auditor), to the Performance Auditor.
- (j) If:
- (i) a report provided to the Principal under clause 20.5(g);
 - (ii) the report prepared by the Performance Auditor under clause 20.5(i); or
 - (iii) any review of the Performance Data, the Performance Reports or information related to the Lane Rental Fee regime by the Principal,

reveals that the Performance Data or a Performance Report is not accurate, the Asset Manager must:

- (iv) fix the inaccuracy and reissue the relevant data or report to the Principal;
 - (v) reassess the occurrence or extent of any:
 - (A) Lane Rental Event including the Lane Rental Fee originally applied (or which would have been originally applied); or
 - (B) KPI Event including the effect on the calculation of the AM Services Payment;
 - (vi) adjust the amount of the next Payment Claim by any amount equal to:
 - (A) the reassessed Lane Rental Fee for the relevant Lane Rental Event(s);
 - (B) the reassessed AM Services Payment,
calculated under Schedule 24 (Payment Mechanism), less:
 - (C) the Lane Rental Fee for the relevant Lane Rental Event(s) originally applied; or
 - (D) the reduction to the AM Services Payment originally applied; and
 - (vii) pay the costs of the Performance Auditor, or reimburse the Principal on demand for any costs of the Performance Auditor paid by the Principal.
- (k) The Asset Manager acknowledges and agrees that:
- (i) it is difficult to calculate with precision the diminution in value of the AM Services to the Principal that it may suffer in connection with each Lane Rental Event or KPI Event;
 - (ii) notwithstanding clause 20.5(k)(i):
 - (A) the application of the Lane Rental Fee associated with each Lane Rental Event; and
 - (B) the calculation of the AM Services Payment associated with each KPI Event,

reflects a genuine pre-estimate of the diminution in value of the AM Services to the Principal in connection with such Lane Rental Event or KPI Event;
 - (iii) both the Principal and the Asset Manager require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
 - (iv) it is in the economic interests of both parties that a formula of the nature referred to in clause 20.5(k)(iii) be adopted and the calculation of the AM Services Payment and the Lane Rental Fee under Schedule 24 (Payment Mechanism) meets the requirements of such a formula;
 - (v) to the extent permissible:
 - (A) it excludes and waives any right to the benefit of the application of any legal rule or norm, including under statute, equity and common law,

relating to the enforceability of the calculation of the AM Services Payment, the Lane Rental Fee or any related provision of this deed; and

- (B) it will not raise or allege in any dispute or proceedings (including a Claim by the Principal under or relating to the calculation of the AM Services Payment or any Lane Rental Fee), any argument or defence relating to the enforceability of such calculations or any related provision of this deed; and
- (vi) if the calculation of the AM Services Payment or any Lane Rental Fee is held to be void or unenforceable for any reason in any Contract Year, clause 20.2 will not limit the Principal's rights and the Asset Manager's Liability to the Principal in accordance with this deed or otherwise at Law for any Liability suffered by the Principal as a consequence of any Lane Rental Events or KPI Events, but the Asset Manager's Liability for any Lane Rental Events or KPI Events (including the consequences of those Lane Rental Events or KPI Events) will not exceed the amount of the applicable Lane Rental Fee or KPI Adjustment that would have applied if not for being void or unenforceable.

20.6 **Records of costs**

- (a) The Asset Manager must keep and maintain proper records of the amounts incurred in executing the AM Services including all relevant details of:
 - (i) contract price in the contracts with its subcontractors;
 - (ii) the Asset Manager's Personnel costs; and
 - (iii) other management costs and overheads,for a period of 7 years.
- (b) The Asset Manager must make available to the Principal and any person authorised by the Principal relevant books of accounts and records in connection with any right or liability of the Asset Manager under this deed which relates to, or is calculated by reference to, the Actual Costs incurred by the Asset Manager or any termination payment payable under this deed on an Open Book Basis (including for examination, audit, inspection and copying) whenever requested by the Principal.

20.7 **Payment of subcontractors**

- (a) If any moneys owing to subcontractors or workers are shown as unpaid in the relevant statements provided by the Asset Manager, the Principal may withhold the moneys so shown until the Asset Manager provides evidence to the satisfaction of the Principal that the moneys have been paid.
- (b) If a worker or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the AM Services, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or subcontractor, and the amount paid will be a debt due from the Asset Manager to the Principal.
- (c) After:
 - (i) the Asset Manager is placed under administration; or

(ii) the making of a winding up order in respect of the Asset Manager,

the Principal will not make any payment to a worker or subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

(d) Nothing in this deed limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

20.8 **Suspension for non-payment**

(a) If the Principal fails to comply with its payment obligations under this clause 20 and the failure is not remedied within 10 Business Days of a written demand from the Asset Manager then the Asset Manager may suspend all or part of the AM Services until such time as that payment has been made by the Principal.

(b) Nothing in this clause 20.8 limits the Asset Manager's rights to suspend under the Security of Payment Act or limits the Asset Manager's other rights under this deed.

(c) As soon as practicable after the Principal has paid the amount notified under clause 20.8(a) the Asset Manager must resume the carrying out of the AM Services.

20.9 **Security of Payment**

(a) The Principal and the Asset Manager agree that:

(i) unless otherwise notified to the Asset Manager by the Principal in writing, the Principal's Representative is to receive all payment claims made under the Security of Payment Act and will give payment statements and carry out all other functions of the Principal under the Security of Payment Act as the agent of the Principal;

(ii) each Payment Statement is a "payment schedule" for the purposes of the Security of Payment Act;

(iii) the amount set out in the Payment Statement in accordance with clause 20.3(b), to the extent permitted by and for the purposes of the relevant security of payment legislation, is the amount of the "progress payment" calculated in accordance with the terms of this deed, to which the Asset Manager is entitled in respect of this deed; and

(iv) if the Asset Manager submits a payment claim under the Security of Payment Act and the Asset Manager has not satisfied its obligations under clause 19 then the Principal's Representative will be entitled to value and certify the value of the work performed by the Asset Manager as zero until the Asset Manager complies with these obligations.

(b) Without limiting clause 20.4, where the Principal receives a payment withholding request from a Subcontractor under the Security of Payment Act, the Principal may withhold:

(i) from any payment under this deed the amount of the Subcontractor's payment claim set out in the payment withholding request; or

(ii) the amount then owed by the Principal to the Asset Manager under this deed where such amount is less than the amount of the Subcontractor's payment claim set out in the payment withholding request.

- (c) The Principal will not be liable in respect of any Claim by the Asset Manager arising out of or in connection with the Principal withholding payment under clause 20.9(b), including any claim under clause 42.22 for interest on such amounts.
- (d) All terms used in this clause 20.9 which have a defined meaning in the Security of Payment Act have the same meaning when used in this clause 20.9.]

20.10 **Change of Use Sinking Fund**

- (a) The Principal will, no later than the SHT Handover Date, establish a bank account in the Principal's name to be known as the Change of Use Sinking Fund and deposit an amount (determined by the Principal in its absolute discretion) into the Change of Use Sinking Fund.
- (b) The Principal will maintain the Change of Use Sinking Fund until the Expiry Date or earlier termination of this deed.
- (c) The Principal will deposit the following amounts into the Change of Use Sinking Fund each month:
 - (i) before the Date of WHT Opening Completion, [REDACTED] (Indexed by the CPI Multiplier (Annual));
 - (ii) after the Date of WHT Opening Completion, [REDACTED] (Indexed by the CPI Multiplier (Annual)); and
 - (iii) an amount equal to the Change of Use Savings which have been realised in the previous month (regardless of when the Change was directed by the Principal).
- (d) The parties acknowledge and agree that as between the Principal and the Asset Manager, the funds contained in the Change of Use Sinking Fund (including any interest earned) remain the property of the Principal except as released in accordance with clause 20.12(b).
- (e) The Principal will provide the Asset Manager with details of the balance of the Change of Use Sinking Fund within 5 Business Days of receipt of a written request from the Asset Manager, or on any other basis which the Principal and the Asset Manager may agree.

20.11 **Change of Use Projects**

- (a) If either party considers that a Change of Use has occurred at any time during the Term, that party may give written notice to the other party proposing a Change of Use Project (**Change of Use Project Proposal**), which must include:
 - (i) if the party proposing the Change of Use Project Proposal is the Principal, details of:
 - (A) the relevant Change of Use;
 - (B) the relevant works and/or services it considers are likely to be required to be carried out in order to effect the Change of Use Project, and any services it considers are likely to be omitted from the AM Services as a result of the Change of Use Project;
 - (C) if known, the Principal's estimate as to the cost of effecting all or part of the Change of Use Project (including any increases in the AM Services Payment); and

- (D) any nominated subcontractor that the Principal would require the Asset Manager to engage or to manage in order to carry out all or part of the Change of Use Project; and
- (ii) if the party proposing the Change of Use Project Proposal is the Asset Manager, specific details of:
 - (A) the relevant Change of Use;
 - (B) the relevant works and/or services it considers are likely to be required to be carried out in order to effect the Change of Use Project, and any services it considers are likely to be omitted from the AM Services as a result of the Change of Use Project;
 - (C) the Actual Costs (if any) that would be incurred, or the savings (if any) that would be realised, by the Asset Manager in performing the AM Services if the Change of Use Project were carried out; and
 - (D) any impact which the Change of Use Project is likely to have on the performance of the AM Services and/or functionality or integrity of the elements of the Motorways.
- (b) If a party gives a Change of Use Project Proposal under clause 20.11(a), then as soon as possible but no later than 20 Business Days after the date of receipt of that Change of Use Project Proposal, the parties will meet to negotiate in good faith the matters set out in the Change of Use Project Proposal, including the terms on which the Asset Manager will effect the Change of Use Project.
 - (c) If the parties reach agreement regarding the terms on which the Asset Manager will effect a Change of Use Project, the Principal will give written notice to the Asset Manager directing the Asset Manager to implement that Change of Use Project (**Change of Use Project Order**), including confirmation of:
 - (i) the works or services required to be carried out or managed by the Asset Manager in order to effect the Change of Use Project;
 - (ii) the amount payable to the Asset Manager to effect the Change of Use Project or the agreed savings resulting from the Change of Use Project (as applicable);
 - (iii) the basis upon which the amount payable will be paid or savings realised (provided that the amount payable will not at any time exceed the balance of the Change of Use Sinking Fund);
 - (iv) the timeframe within which the Change of Use Project must be implemented; and
 - (v) the agreed effect that the Change of Use Project will have, or may have, (if any) on the operation of any of the Motorways, including any impact on the performance of the AM Services and/or functionality or integrity of any element of the Motorways.
 - (d) Nothing in this clause 20.11 prevents the Principal's Representative from issuing a Change Proposal or a Change Order pursuant to clause 13.1 or the Change Procedure that involves the same (or similar) changes to the AM Services as a Change of Use Project.

20.12 Drawing on the Change of Use Sinking Fund

- (a) The Principal may only draw on the Change of Use Sinking Fund in accordance with this clause 20.12.
- (b) During the Term, the Principal may draw on the Change of Use Sinking Fund to pay claims submitted by the Asset Manager in accordance with clause 20.3 in respect of a Change of Use Project.
- (c) Despite any other provision in this deed, the Asset Manager's entitlement to claim for payment arising out of or in connection with a Change of Use Project is limited to the lesser of the amount agreed as payable under clause 20.11(c) and the balance of the Change of Use Sinking Fund at the time that the Asset Manager submits its payment claim in accordance with clause 20.3(b).
- (d) Upon the Expiry Date or the earlier termination of this deed, the Asset Manager will have no entitlement to the funds remaining in the Change of Use Sinking Fund.

20.13 RLA Assets

- (a) The Principal will:
 - (i) prior to the SHT Handover Date, establish a bank account to be known as the "Asset Renewal Reserve Fund" in the sole name of the Principal;
 - (ii) deposit into the Asset Renewal Reserve Fund the Asset Renewal Reserve Amounts specified in section 1(a) of the ARRF Schedule; and
 - (iii) provide the Asset Manager with details of the balance of the Asset Renewal Reserve Fund as requested.
- (b) The parties acknowledge and agree that the purpose of the Asset Renewal Reserve Fund is to enable the Asset Manager to make strategic decisions regarding:
 - (i) the Major Repair and Replacement Works it will perform on the RLA Assets in accordance with the Asset Management Plans; and
 - (ii) the maintenance strategies it will adopt in relation to the RLA Assets.
- (c) The Asset Manager has no entitlement to Claim any amount in respect of Major Repair and Replacement Works in relation to RLA Assets or RLA Maintenance Activities in excess of:
 - (i) the current balance of the Asset Renewal Reserve Fund; or
 - (ii) the Drawdown Cap, less Asset Renewal Payments paid to date in the relevant Contract Period.

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

(ii) [Redacted]

[Redacted]

■

■

■ [Redacted]

■ [Redacted]

[Redacted]

[Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

[Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

■

■

■ [Redacted]

■ [Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (j) The relevant party must pay the other party the amount determined in accordance with clause 20.13(f), clause 20.13(g), clause 20.13(h) or clause 20.13(i) (as applicable) within 15 Business Days of receipt of a tax invoice in the amount certified.
- (k) If this deed is terminated prior to the Expiry Date for any reason, clauses 20.13(d) to 20.13(j) (inclusive) will not apply and the funds contained in the Asset Renewal Reserve Fund (including any interest earned, but excluding any amount payable to the Asset Manager for Major Repair and Replacement Works carried out on RLA Assets or RLA Maintenance Activities prior to the date of termination) will be retained by the Principal.

21. TRANSPORT NETWORK MANAGEMENT

21.1 No restrictions on the Principal

The Asset Manager acknowledges that nothing in this deed will in any way limit or restrict the ability or power of the Principal or the NSW Government, directly or through any Authority, to:

- (a) develop, construct, operate and/or maintain directly, by sub-contractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;
- (b) maintain, manage, develop, change or extend the Sydney road and transport network or any traffic or transport system;
- (c) extend, alter, close or upgrade existing tollways, tunnels, freeways and other roads;
- (d) extend, alter or upgrade existing public transport routes or services;
- (e) construct new public transport routes or establish new transport services;
- (f) develop the transport and public transport network generally;
- (g) implement NSW Government Policies; or
- (h) contract with any person for any of these things or to otherwise do anything which they are empowered to do by Law.

21.2 Permitted Activities

- (a) The Asset Manager acknowledges and agrees that the Principal and its nominees may do any one or more of the following activities (each a **Permitted Activity**):
 - (i) connect any public transport, pedestrian or bicycle access to any of the Motorways;
 - (ii) construct, operate and maintain any structure, road or other means of vehicle, public transport, pedestrian or bicycle access above, below or adjacent to any of the Motorways;
 - (iii) construct, operate and maintain Utility Services (in whole or in part) in the Motorways or the Maintenance Site;
 - (iv) construct, operate and maintain any other infrastructure or improvement (in whole or in part) in the Motorways; and
 - (v) connect any such Utility Services or other infrastructure or improvements to the Motorways or to any other structures located within any of the Motorways or the Maintenance Site.
- (b) If any Permitted Activity is to occur then:
 - (i) the Principal must give the Asset Manager reasonable notice of that fact; and
 - (ii) the Asset Manager must co-operate with the Principal to enable the Permitted Activity to be undertaken.
- (c) If the Principal has provided notice to the Asset Manager under clause 21.2(b)(i), then:
 - (i) the Asset Manager must:
 - (A) give the Principal and its nominees sufficient access to the Maintenance Site to enable the Principal and its nominees to carry out any investigatory work or pre-construction activity and to undertake the Permitted Activity;
 - (B) co-operate with the Principal to facilitate the Permitted Activity, including permitting reasonable traffic adjustments within or adjacent to the Motorways; and
 - (C) take all reasonable steps to Mitigate any Loss suffered by it and the Principal as a result of the Permitted Activity including by:
 - (aa) subject to the Principal having issued a Change Order pursuant to clause 13.1, installing such equipment as is necessary to prevent untolled use of the Motorways; and
 - (bb) opening the shoulder of the carriageway to traffic where a temporary lane closure is required.
- (d) The Asset Manager acknowledges and agrees that the Principal is not liable for any Claim in respect of Loss suffered or incurred by the Asset Manager arising out of or in any way in connection with a Permitted Activity, unless the Permitted Activity results in a material increase in the cost of performance of the AM Services or the obligations of the Asset Manager under this deed, then:

- (i) the Asset Manager will be entitled to make a claim for its materially increased Actual Costs in relation to the Permitted Activity, provided that the Asset Manager makes such claim within 20 Business Days of the Principal's notice issued pursuant to clause 21.2(b)(i); and
 - (ii) where the Asset Manager makes a claim pursuant to clause 21.2(d)(i), the Principal will be deemed to have issued a "Change Proposal" pursuant to the Change Procedure in respect of such Permitted Activity.
- (e) Upon the completion of any works undertaken by the Principal or its nominees pursuant to this clause 21.2 (other than works contemplated by clause 21.2(a)(ii)), unless otherwise directed the Asset Manager's maintenance and repair obligations under this deed will apply to the works as if the works formed part of the relevant Motorway.
- (f) The parties acknowledge that nothing in this clause 21.2 restricts the Principal from directing a Change in accordance with clause 13 in respect of any activity that may also be a Permitted Activity.

22. **INTERFACES**

22.1 **Interfaces**

- (a) As and when requested by the Principal's Representative, the Asset Manager must:
- (i) develop Interface Protocols with:
 - (A) the current operator of the M4-M5 Link;
 - (B) the current operator of the Beaches Link;
 - (C) the current operator of the Sydney Harbour Bridge; and
 - (D) the current operator of the Warringah Freeway.

in relation to any interface between the Asset Manager and those entities;
 - (ii) negotiate each Interface Protocol in good faith;
 - (iii) enter into each Interface Protocol once it is agreed;
 - (iv) at all times comply with the terms of all Interface Protocols; and
 - (v) not terminate any Interface Protocol without the prior written consent of the Principal.
- (b) The Asset Manager must, in carrying out the AM Services, comply with any direction of the Principal in relation to compliance with the conditions and requirements of this deed.

22.2 **Main Works Interface Deed**

- (a) The Asset Manager must execute the Main Works P2 Interface Deed upon request.
- (b) The Asset Manager must:
- (i) at all times comply with the terms of the Main Works P2 Interface Deed; and

- (ii) not terminate the Main Works P2 Interface Deed without the prior written consent of the Principal.
- (c) The Asset Manager acknowledges that it has made allowance in the AM Services Payment for all delays and costs in respect of its obligations under the Main Works P2 Interface Deed and the Asset Manager will not be entitled to any claim, extension of time or other form of relief for any delay incurred with respect to the AM Services as a result of performing its obligations under the Main Works P2 Interface Deed.

23. RATES, TAXES AND GST

23.1 Rates and Taxes

Subject to clauses 23.2 and 24, and without limiting clause 2.2, the Asset Manager will be liable for:

- (a) all water, sewerage and drainage rates:
 - (i) in respect of the SHT Motorway and the DT Motorway, as from the SHT Handover Date until the end of the Term; and
 - (ii) in respect of the WHT Motorway, as from the Date of WHT Opening Completion until the end of the Term; and
- (b) Taxes levied in respect of the performance of the Asset Manager's obligations under this deed, other AM Documents or otherwise.

23.2 GST

- (a) Notwithstanding any other provision of this deed, any amount payable for a supply made under this deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) Subject to clause 23.2(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
 - (i) any amount payable or consideration to be provided under any other provision of this deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (ii) an additional amount will be payable by the party providing consideration for that supply (the **Recipient**), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this deed.
- (c) Subject to clause 23.2(e), if for any reason, the GST payable by the Supplier in respect of a supply it makes under this deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 23.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment

note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.

- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause 23.2, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the Resolution Institute for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this deed, the matters required to be taken into account by the Supplier under this clause 23.2 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 23.2(d) will not apply to any supply dealt with under clause 23.2(e).
- (e) The parties acknowledge that this clause 23.2(e) applies to the extent each party is making supplies to the other party for consideration, and is the Recipient of all supplies from the other party. Where two parties (or entities on whose behalf those parties are acting) in accordance with this deed exchange non-monetary consideration:
 - (i) notwithstanding clause 23.2(b), the additional amount payable on any supply by the Recipient to the Supplier will be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; unless
 - (ii) it is determined, whether by agreement between the parties or by demand, assessment or private ruling issued by the Commissioner of Taxation that there is a disparity between:
 - (A) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Recipient to the Supplier; and
 - (B) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Supplier and having their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 23.2(e)(ii)(A).
- (f) Where clause 23.2(e)(ii) applies, the Supplier and the Recipient will use best endeavours to determine a mutually acceptable means of calculating additional amounts to be provided between the parties to ensure, as far as possible that neither the Supplier nor the Recipient suffers a net cost or loss. If within 30 Business Days of the determination under clause 23.2(e)(ii), the parties are unable to agree on a means of calculating the additional amounts payable, clause 23.2(b) will apply without any limitation imposed by clause 23.2(e), however:
 - (i) the Supplier must only issue a tax invoice or an adjustment note to reflect the application of this clause 23.2(f) after the parties have either reached an agreement under this clause 23.2(f) or have determined that they are unable to reach such an agreement; and
 - (ii) the additional amount payable pursuant to this clause 23.2(f) will only be payable 5 Business Days after the receipt by the Recipient of the tax invoice or adjustment note issued by the Supplier in accordance with clause 23.2(f)(i).

- (g) Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clause 23.2, it must notify the other parties to this deed of that fact and provide them with a copy of the demand, assessment or private ruling within 10 Business Days of receiving it. Before any party to this deed applies for a private ruling regarding the matters addressed in clause 23.2(e), it must provide the other parties to this deed with a copy of the private ruling request it intends to lodge with the Commissioner of Taxation no less than 20 Business Days prior to its lodgement of same.

24. **CHANGES IN LAW**

24.1 **No claim for change in Law**

Subject to clause 13 and this clause 24, the Asset Manager acknowledges and agrees that it will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any changes in Law.

24.2 **Qualifying Change in Law**

- (a) If a Qualifying Change in Law occurs which:

- (i) has a direct effect on the AM Services (which may include a direct effect on the method or means by which the Asset Manager carries out the AM Services) such that a Change is required as a consequence of the occurrence of the Qualifying Change in Law; and
- (ii) results or will result in an increase in Actual Costs or a decrease in the Asset Manager's costs of carrying out the AM Services,

the Asset Manager must, within 15 Business Days after the later of the occurrence of the Qualifying Change in Law and when the Asset Manager first became aware of (or ought reasonably to have first become aware of) the change, give a notice to the Principal's Representative:

- (iii) containing details of the Qualifying Change in Law; and

- (iv) setting out the Asset Manager's estimate of:

- (A) the increase in the Asset Manager's Actual Costs of carrying out the AM Services that result or will result directly from complying with the Qualifying Change in Law and a reasonable amount on account of overhead and profit of the Asset Manager not exceeding the AM Margin; or
- (B) the decrease in the Asset Manager's cost of carrying out the AM Services that result directly from complying with the Qualifying Change in Law and the corresponding decrease in AM Margin payable,

including sufficient information to support the estimate.

- (b) Notwithstanding that the Asset Manager may not have given a notice under clause 24.2(a), the Principal may notify the Asset Manager that the Principal considers a Qualifying Change in Law has occurred and require the Asset Manager to provide the details required by clause 24.2(a) within 15 Business Days of the Principal's notice.
- (c) If:

- (i) the Asset Manager issues a notice complying with the requirements of clause 24.2(a) and otherwise complies with the requirements of this clause 24; or
- (ii) the Principal issues a notice under clause 24.2(b),

clause 13.1 will apply as if the Principal had given a Change Order in respect of the Change which is required as a consequence of the occurrence of the Qualifying Change in Law provided that, in the case of a Qualifying Change in Law which results or will result in an increase in the Actual Costs of carrying out the AM Services, any Change Costs payable to the Asset Manager in respect of the Qualifying Change in Law will be limited:

- (iii) to the increase in the Asset Manager's Actual Costs of carrying out the AM Services that result or will result directly from complying with the Qualifying Change in Law and a reasonable amount on account of overhead and profit of the Asset Manager not exceeding the AM Margin; and
 - (iv) in accordance with clause 24.2(d).
- (d) The Principal will only be liable to pay a portion of the Change Costs determined in accordance with clause 24.2(c) as follows:
- (i) where the Change Costs, together with the Change Costs for other Qualifying Changes in Law under this clause 24.2, are less than or equal to ██████ in aggregate, the Principal will not be liable for the Change Costs;
 - (ii) where the Change Costs, together with the Change Costs for other Qualifying Changes in Law under this clause 24.2, are greater than ██████ in aggregate, the Principal will not be liable for the portion of the Change Costs from ██████, but will be liable for ██████ of the portion of the Change Costs which is above ██████.
- (e) The Change Costs for a Change in Law will be reimbursed by way of an adjustment to the Core Services Payment.

24.3 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards that impacts the carrying out of the AM Services:
- (i) the Asset Manager must give a written notice to the Principal's Representative within 20 Business Days after the date on which it first becomes aware of (or ought reasonably to have first become aware of) the Change in Codes and Standards, containing:
 - (A) details of the Change in Codes and Standards, including an assessment of the compliance options available to the Asset Manager and a recommended course of action (including sufficient information to support the recommended course of action); and
 - (B) an estimate of the Asset Manager's increased or decreased Actual Costs of complying with that Change in Codes and Standards in accordance with the recommended course of action (including sufficient information to support the estimate); and
 - (ii) if a notice is given by the Asset Manager which complies with clause 24.3(a)(i), then within 10 Business Days after the date of the notice, the Principal's Representative must (in its absolute discretion) either:

- (A) direct the Asset Manager to disregard the Change in Codes and Standards; or
- (B) direct the Asset Manager to comply with the Change in Codes and Standards, whether in accordance with the recommended course of action or otherwise.

(b) If the Principal's Representative gives a notice under clause 24.3(a)(ii)(A), the Asset Manager will not be regarded as being in breach of this deed to the extent that it disregards the relevant Change in Codes and Standards.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

24.5 Change in NSW Government Policy

- (a) If a Change in NSW Government Policy occurs after the Commencement Date which:
- (i) has a direct effect on the AM Services (which may include a direct effect on the method or means by which the Asset Manager carries out the AM Services) such that a Change is required as a consequence of the occurrence of the Change in NSW Government Policy; and
 - (ii) results or will result in an increase in Actual Costs or a decrease in the Asset Manager's costs of carrying out the AM Services,

the Asset Manager must, within 15 Business Days after the later of the occurrence of the Change in NSW Government Policy and when the Asset Manager first became aware of (or ought reasonably to have first become aware of) the change, give a notice to the Principal's Representative:

- (iii) containing details of the Change in NSW Government Policy; and
- (iv) setting out the Asset Manager's estimate of:
 - (A) the increase in the Asset Manager's Actual Costs of carrying out the AM Services that result or will result directly from complying with the Change in NSW Government Policy and a reasonable amount on account of overhead and profit of the Asset Manager not exceeding the AM Margin; or
 - (B) the decrease in the Asset Manager's cost of carrying out the AM Services that result directly from complying with the Change in NSW Government Policy and the corresponding decrease in AM Margin payable,

including sufficient information to support the estimate.

- (b) Notwithstanding that the Asset Manager may not have given a notice under clause 24.5(a), the Principal may notify the Asset Manager that a Change in NSW Government Policy has occurred and require the Asset Manager to provide the details required by clause 24.5(a) within 15 Business Days of the Principal's notice.
- (c) If:
 - (i) the Asset Manager issues a notice complying with the requirements of clause 24.5(a) and otherwise complies with the requirements of this clause 24; or
 - (ii) the Principal issues a notice under clause 24.5(b),

clause 13.1 will apply as if the Principal had given a Change Order in respect of the Change which is required as a consequence of the occurrence of the clause 24.5(a) provided that, in the case of a Change in NSW Government Policy which results or will result in an increase in the Actual Costs of carrying out the AM Services, any Change Costs payable to the Asset Manager in respect of the Change in NSW Government Policy will be limited:

- (iii) to the increase in the Asset Manager's Actual Costs of carrying out the AM Services that result or will result directly from complying with the Change in NSW Government Policy and a reasonable amount on account of overhead and profit of the Asset Manager not exceeding the AM Margin; and
- (iv) in accordance with clause 24.5(d).

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- (e) The Change Costs for a Change in NSW Government Policy will be reimbursed by way of an adjustment to the Core Services Payment.

25. **LOSS OR DAMAGE AND INSURANCE**

25.1 **Risk of loss or damage**

- (a) The Asset Manager must, in carrying out the AM Services, take all reasonable precautions to avoid destruction and damage to any property (including any property of the Principal).
- (b) Subject to clause 25.14:
 - (i) from the SHT Handover Date until the end of the Term, the Asset Manager bears the risk of any physical loss or damage to any part of the SHT Motorway; and
 - (ii) from the Date of WHT Opening Completion until the end of the Term, the Asset Manager bears the risk of any physical loss or damage to any part of the WHT Motorway,

to the extent set out in clause 25.9.

25.2 **Certain third party claims**

Despite any provision to the contrary, the Asset Manager will have no liability to the Principal or its Related Parties, nor will the Principal or its Related Parties be entitled to make any Claim against the Asset Manager, in respect of any Liability of the Principal or its Related Parties to a third party for Pure Economic Loss arising directly as a result of:

- (a) the decision by the Principal to proceed with the Project; or
- (b) the existence or location of any of the Motorways.

25.3 **Insured Liability**

- (a) Nothing in this deed operates to exclude or limit the Asset Manager's liability to the Principal or its Related Parties for any Loss to the extent such Loss is an Insured Liability.
- (b) For the purposes of this deed, "Insured Liability" means:
 - (i) where the Asset Manager or any of its Related Parties or the Principal or any of its Related Parties has an entitlement to recover or be indemnified in respect of such Loss under an AM Insurance or Principal Insurance:
 - (A) the amount or amounts actually recovered by the Asset Manager or its Related Parties or the Principal or its Related Parties (as applicable) from; and
 - (B) the amount or amounts for which the Asset Manager or its Related Parties or the Principal or its Related Parties is otherwise actually indemnified by,

the insurer or insurers of such insurance; and
 - (ii) where, but for:
 - (A) the failure of the Asset Manager to comply with its obligations under this clause 25 to obtain an AM Insurance;
 - (B) the insolvency of the insurer or insurers of any AM Insurance; or

- (C) any act or omission by the Asset Manager or its Related Parties (including, without limitation, any misrepresentation, non-disclosure, breach of a duty to the insurer, breach of the terms and conditions of any AM Insurance or Principal Insurance or failure to comply with those terms or conditions) not caused or contributed to by any act or omission of the Principal or its Related Parties which has resulted in a loss of or reduction of the recovery or indemnity under an AM Insurance or Principal Insurance,

the Asset Manager or its Related Parties or the Principal or its Related Parties would have been entitled to recover from, or be indemnified by, an insurer or insurers of such AM Insurance or Principal Insurance in respect of Loss, the amount or amounts which the Asset Manager or its Related Parties or the Principal or its Related Parties (as applicable) would have been entitled to recover from, or be indemnified by, an insurer or insurers of such AM Insurance or Principal Insurance .

25.4 **Damage to third party property**

- (a) Without limiting clause 26.1, where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of, a breach by the Asset Manager of this deed or an act or omission of the Asset Manager, the Asset Manager must do one of the following (at the option of the relevant third party):
 - (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party, provided that, if doing so would prejudice the Asset Manager's ability to claim under any of the AM Insurances, the Asset Manager will notify the Principal of the same and the Principal will direct the Asset Manager whether or not it should proceed.
- (b) Without limiting clause 8.5(a)(i)(B), if the Asset Manager fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time and such failure is not due to a direction by the Principal under clause 25.4(a), the Principal may carry out the repair, replacement or reinstatement work or pay reasonable compensation, and any Loss suffered or incurred by the Principal will be a debt due and payable from the Asset Manager to the Principal.

25.5 **AM Insurances**

- (a) The Asset Manager must effect and maintain the AM Insurances (or cause the AM Insurances to be effected and maintained) in accordance with Schedule 26 (Insurances).
- (b) The Asset Manager must:
 - (i) not do or permit, or omit to do, anything which prejudices any AM Insurance;
 - (ii) rectify anything which might, if not rectified, prejudice any AM Insurance;
 - (iii) reinstate any AM Insurance if it lapses;
 - (iv) not cancel, materially vary or allow any AM Insurance to lapse without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed);
 - (v) as soon as reasonably practicable notify the Principal of any fact or circumstance or change in circumstances which could be reasonably expected to prejudice an AM Insurance;

- (vi) in respect of each AM Insurance, comply with its duty of disclosure to all relevant insurers, including where failure to do so would breach, prejudice or invalidate the relevant policy;
 - (vii) as soon as reasonably practicable, notify the Principal when it receives or gives a notice in connection with the cancellation of any AM Insurance;
 - (viii) do all things reasonably required by the Principal or any other person in whose name an AM Insurance is effected to enable the Principal or that other person to claim, collect or recover moneys due under any AM Insurance;
 - (ix) comply at all times with the terms of each AM Insurance; and
 - (x) ensure that, to the extent permitted by Law, all AM Insurances which cover against liabilities which it is required by this deed to effect or maintain do not reduce or exclude the insurance cover in respect of liabilities assumed under this clause 25 and clauses 26 and 27.
- (c) The Asset Manager is responsible for, must pay (where relevant) and accepts all risks in connection with any deductibles or excess in respect of any claim on an AM Insurance policy.

25.6 Premiums

- (a) The Asset Manager must punctually pay all premiums in respect of all AM Insurances and give the Principal evidence of payment of premiums:
 - (i) on each renewal of the relevant AM Insurance; and
 - (ii) otherwise, if and when requested by the Principal.
- (b) If the Asset Manager fails to effect or maintain any AM Insurances or to pay a premium or other amount payable to the insurer in respect of such insurance, the Principal may effect such insurance (and the Asset Manager must provide all reasonable assistance to the Principal to allow it to do so) or pay such premium or other amount and any costs so incurred by the Principal will be a debt due and payable by the Asset Manager to the Principal.

25.7 Dealing with claims

In addition to the obligations to notify the insurer under any AM Insurance, the Asset Manager must:

- (a) subject to the terms of the AM Insurances and the insured's duties to insurers, notify the Principal of any occurrence or circumstance of which the Asset Manager is aware, or should reasonably have been aware, that could reasonably be expected to give rise to a claim under any AM Insurance (**Notifiable Claim**);
- (b) keep the Principal fully informed of subsequent developments concerning the Notifiable Claim;
- (c) not compromise, settle or enforce a Notifiable Claim without the prior written consent of the Principal (which must not be unreasonably withheld or delayed); and
- (d) diligently pursue any Notifiable Claim.

25.8 **Principal Insurance**

The Principal must effect and maintain the Principal Insurances (or cause the Principal Insurances to be effected and maintained) in accordance with Schedule 26 (Insurances).

25.9 **Reinstatement**

If any physical loss or damage occurs to any part of the WHT Motorway or the SHT Motorway, the Asset Manager must (without limiting its other obligations under this deed):

- (a) subject to allowing reasonable time for inspection by insurers and to the terms of any relevant AM Insurance policy or Principal Insurance policy, take immediate steps to clear any debris and subject to clause 25.9(b), begin initial repair work;
- (b) promptly consult with the Principal and carry out such steps as are necessary to ensure:
 - (i) the prompt repair or replacement of the physical loss or damage so that:
 - (A) subject to clause 25.10, the relevant part of the Motorway complies with:
 - (aa) in the case of the WHT Motorway, the Main Works SWTCs; and
 - (bb) all applicable Law; and
 - (B) there is minimal disruption to the relevant Motorway; and
 - (ii) that, to the greatest extent possible, the Asset Manager continues to comply with its obligations under the AM Documents,

provided that if the Actual Costs of repair of the physical loss or damage is reasonably expected to be above the Damage Threshold then the Asset Manager is only required to carry out the repair and replacement under this clause if:
 - (iii) the repair or replacement are immediately required to ensure the continued safe operation of the relevant Motorway, in which case the Asset Manager will bear the cost of repair or replacement up to the Damage Threshold but will be reimbursed its Actual Costs above the Damage Threshold as a Reimbursable Service;
 - (iv) the Principal directs the Asset Manager to carry out the repair or replacement as a Reimbursable Service, in which case the Asset Manager will bear the cost of the repair or replacement up to the Damage Threshold; or
 - (v) the loss or damage was caused by the Asset Manager's breach, act or omission, in which case the Asset Manager will bear the full cost of the repair or replacement;
- (c) manage all repair and replacement activities so as to minimise, to the extent reasonably practicable having regard to the repair and reinstatement activities to be undertaken, the impact on the relevant Motorway;
- (d) keep the Principal fully informed of the progress of the repair and replacement activities.

25.10 **Direction by the Principal to reinstate to different specifications**

- (a) The Principal may require the Asset Manager to reinstate or repair a Motorway on the basis of different specifications by directing a Change pursuant to clause 13.
- (b) The reinstatement or repair work will only constitute a Change to the extent that it differs from what would have otherwise been required under this deed.

25.11 **Not used**

25.12 **Asset Manager conduct of claims against third parties**

[Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

25.13 **Procedure for Third Party Claims**

■ [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted]

[Redacted]

■ [Redacted]

■ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

25.14 Uninsurable Risks

- (a) If the Asset Manager believes that any risk that it is required to insure under this deed is or will become Uninsurable, then:
 - (i) it must notify the Principal within 3 Business Days after it believes that the risk has become, or will become, Uninsurable; and
 - (ii) clauses 25.14(b) to 25.14(f) will apply if the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is, or will become, Uninsurable.
- (b) The Asset Manager is not obliged to effect or maintain insurance for a particular risk under an AM Insurance to the extent that, and only for so long as that risk is Uninsurable (and did not become Uninsurable as a result of an act or omission of the Asset Manager or a Related Party of the Asset Manager).
- (c) If a risk is Uninsurable, the Asset Manager must approach the insurance markets on a regular basis (satisfactory to the Principal and the Asset Manager, both acting reasonably) to establish whether that risk remains Uninsurable and must advise the Principal accordingly.
- (d) If any Loss or damage occurs to any part of a Motorway as a result of an Uninsurable Force Majeure Event the Principal may:
 - (i) direct reinstatement of such Loss or damage as a Change;
 - (ii) direct a Change to omit the affected part of the relevant Motorway from the AM Services; or
 - (iii) exercise its rights under clause 30.8.

- (e) If, in the Principal's opinion (acting reasonably) a risk which is required to be insured against under an AM Insurance is no longer Uninsurable, the Principal may give written notice to the Asset Manager.
- (f) If:
 - (i) the Asset Manager believes that a risk which is required to be insured against under an AM Insurance is no longer Uninsurable, the Asset Manager must notify the Principal and promptly effect the relevant AM Insurance; or
 - (ii) the Principal gives the Asset Manager a notice pursuant to clause 25.14(e) and the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that a risk which is required to be insured against under an AM Insurance is no longer Uninsurable, the Asset Manager must promptly effect the relevant AM Insurance.

26. INDEMNITY AND LIABILITY EXCLUSIONS

26.1 Indemnity from the Asset Manager

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

26.2 Exclusions from indemnity

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

26.3 Consequential Loss

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

26.4 No circularity

The provisions of clauses 26.2, 26.3 or 27.1 do not operate to release the Asset Manager from any liability to the Principal to the extent that an insurer of any policy of insurance required under this deed seeks to rely on clauses 26.2, 26.3 or 27.1 to deny liability which it otherwise has to indemnify an insured under the relevant policy.

26.5 Mitigation

Where under the terms of this deed, a party:

- (a) is obliged to pay an amount in respect of any Loss suffered or incurred by the other party; or
- (b) indemnifies the other party against any Liability, Claim or Loss,

that other party must (notwithstanding such obligation or indemnity) in each case take all reasonable steps to Mitigate that Loss, Liability or Claim and the costs of taking those steps will be recoverable from that party.

27. CAP ON LIABILITY

27.1 Liability cap (general)

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

27.2 Exclusions to the General Cap and the Reduction Cap

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

28. **INTELLECTUAL PROPERTY**

28.1 **Principal ownership of Contract Data**

- (a) The Principal owns all Contract Data and all Intellectual Property Rights in all Contract Data.
- (b) The Asset Manager assigns to the Principal, on creation, ownership of all Contract Data and all Intellectual Property Rights in all Contract Data.

28.2 **Licence of Intellectual Property Rights**

The Asset Manager (irrevocably for all time and despite any termination of this deed for any reason) grants to the Principal an irrevocable, non-exclusive, royalty free, perpetual and fully assignable licence to use, possess, modify, vary or amend (and to sublicense others to use, possess, modify, vary or amend) all Intellectual Property Rights in or relating to:

- (a) the materials, documents, images, photographs, software, processes and methods relevant to the AM Services (including processes and methods of working); and
- (b) each of the Deliverables,

(together the ***Contract Documentation and Deliverables***), to the extent not assigned under clause 28.1, for:

- (c) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the Project;
- (d) any purpose associated with further development of the Maintenance Site;
- (e) any other purpose associated with the Project; and
- (f) any purpose associated with enabling, integrating or connecting any Related Road Project,

which licence is effective immediately and will survive termination or expiry of this deed.

28.3 **Third Party Software**

- (a) To the extent that the licence granted under clause 28.2 applies to commercially available off-the-shelf Third Party Software, excluding Open Source Software, the Asset Manager's obligations are limited to the following:
 - (i) the Asset Manager must use its best endeavours to procure a licence in respect of that Third Party Software in accordance with clause 28.2; and
 - (ii) to the extent the Asset Manager is unable to procure such a licence despite the use of its best endeavours, the Asset Manager must license that Third Party Software to the Principal to the fullest extent to which the Asset Manager is permitted to do so pursuant to the terms of the licence granted to the Asset Manager by the third party licensor and on the terms of that licence.
- (b) For the purposes of clause 28.3(a):
 - (i) the Asset Manager must promptly notify the Principal if it is only able to obtain the agreement of a third party to grant a licence required by clause 28.2 by making an additional payment or incurring an additional cost to the third party; and
 - (ii) unless the Principal agrees to reimburse the Asset Manager for such additional payment or cost, the Asset Manager's obligations to use its best endeavours does not include an obligation to make the additional payment or incur the additional cost.
- (c) The licence granted under clause 28.2 does not include the right to:
 - (i) install or use the Software other than in connection with the Motorways; or
 - (ii) obtain any Source Code in respect of the Software.
- (d) To the extent that the licence granted under clause 28.2 applies to Open Source Software, the Asset Manager must procure the grant to the Principal of a licence of the Open Source Software on commercially available licence terms.
- (e) Subject to clause 28.3(b), the Asset Manager agrees that the AM Services Payment is inclusive of all applicable licence fees for Software licensed under clause 28.2 and the Asset Manager must ensure that all licence fees for the use of Third Party Software are paid to the relevant third party supplier.

28.4 **Warranty**

- (a) The Asset Manager:

- (i) warrants that the Principal's use of the Contract Documentation and Deliverables, or any other work provided by the Asset Manager under this deed, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction;
 - (ii) warrants that there are no Security Interests, and that it will not allow any Security Interests to be created, over any Intellectual Property Rights referred to in clause 28.2; and
 - (iii) must indemnify the Principal to the extent any Claims, or costs, expenses, Losses or damages are suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with:
 - (A) the performance of the AM Services;
 - (B) the use of the Contract Documentation and Deliverables in accordance with the licences granted under clause 28.2 and clause 28.3.
- (b) For the purposes of clause 28.4(a), the Principal's use of the Contract Documentation and Deliverables includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change any part of the Contract Documentation and Deliverables or any part of the AM Services to which the Contract Documentation and Deliverables or any other work provided by the Asset Manager under this deed relates:
- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.

28.5 **Asset Manager to procure for the Principal**

- (a) The Asset Manager agrees to, and agrees to procure the cooperation of any other third parties to:
 - (i) execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal, its Related Parties or their licensees, assignees or successors and their licensees, or any other person authorised by them) as reasonably requested by the Principal to give full effect to the provisions of this clause 28; and
 - (ii) allow or assist the Principal (and its Related Parties, licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (b) The Asset Manager irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 28.5 if the Asset Manager fails to execute the document or do the relevant act or thing within 3 Business Days of a written request by the Principal's Representative.

- (c) The Asset Manager warrants that:
 - (i) the use of the Intellectual Property Rights licensed under this clause 28 pursuant to the terms of this deed does not and will not infringe the Intellectual Property Rights of any party; and
 - (ii) the Asset Manager is able to grant the licence granted in accordance with clause 28.2.
- (d) Without limiting clause 28.5(c), if any action or Claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal, its Related Parties or their licensees, assignees or successors or their licensees, or other person authorised by them, of the Contract Documentation and Deliverables, the AM Services or any part of them, being materially disrupted, impaired or adversely affected, the Asset Manager must at its own expense and at the Principal's option:
 - (i) procure for the benefit of the Principal, its Related Parties and its licensees, assignees and successors and their licensees and any other person authorised by them the right to continue to use and exploit the Intellectual Property Rights licensed pursuant to clause 28.2, in accordance with this deed; or
 - (ii) modify or replace the Contract Documentation and Deliverables, the AM Services or relevant part of them, in respect of which Intellectual Property Rights are licensed pursuant to clause 28.2, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Deliverables, the AM Services or the relevant part of them in respect of which Intellectual Property Rights are licensed pursuant to clause 28.2 will:
 - (A) comply with the requirements of this deed; and
 - (B) not limit or otherwise affect the Principal's rights, or the Asset Manager's ability to comply with its obligations, under this deed or otherwise according to Law.
- (e) The Asset Manager indemnifies, and agrees to keep indemnified, the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
 - (i) a breach by the Asset Manager of any warranty set out in this clause 28; or
 - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Deliverables, the AM Services or any part of them.

28.6 Moral rights

The Asset Manager, in respect of the Intellectual Property Rights set out in this clause 28:

- (a) to the extent permitted by Law, will not, and will take reasonable steps to ensure that its Related Parties do not, sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Commencement Date) in respect of any Intellectual Property Rights against:
 - (i) the Principal;
 - (ii) the Principal's Related Parties; or

- (iii) any third party to whom the Principal or its Related Parties sub-licences (whether express or implied), or grants any other right to use, possess, modify, vary or amend any Intellectual Property Right;
- (b) will take reasonable steps to procure (without coercion) that all individuals who are, or are to be, or may be, authors of any Intellectual Property Right, sign, date and return to the Asset Manager a Moral Rights Consent (in consideration for the payment of █ to that individual) prior to those individuals commencing work on the creation of any Intellectual Property Rights, or as soon as practicable thereafter, in which each such individual becomes bound by the obligations to the Principal as set out in the Moral Rights Consent, and to pay each such individual the sum of █ on behalf of the Principal;
- (c) will within 3 Business Days after a request by the Principal, provide to the Principal any Moral Rights Consent which is obtained pursuant to clause 28.6(b) as requested by the Principal; and
- (d) will maintain an up-to-date record of the names and contact details of each person who is an author of any Intellectual Property Right and the Intellectual Property Right of which such person is an author, and provide a copy of any updated records to the Principal upon request.

29. CONFIDENTIALITY, PUBLICITY AND PRIVACY

29.1 General restriction

Subject to clause 29.2, no party will, at any time, without the written consent of the other party, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Principal, █ and their officers, employees, consultants, advisers and agents who require such reports, studies, information and data to enable them properly to carry out their duties):

- (a) any of the contents of this deed or the other AM Documents;
- (b) any information relating to the negotiations concerning the same; or
- (c) any information which may have come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other party.

29.2 Exceptions

The restrictions imposed by clause 29.1 will not apply to the disclosure of any information:

- (a) which is now in, or after the Commencement Date comes into, the public domain (other than by breach of this clause) or which is obtainable with no more than reasonable diligence from sources other than the parties;
- (b) which is required to be disclosed by Law or the listing rules of the ASX Limited (if applicable);
- (c) as required for any legitimate NSW Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007 or the NSW Public Private Partnership Guidelines 2017 (TPP17-07) published by the NSW Treasury;

- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing party is a party or to an expert in the course of any determination by him to which the disclosing party is a party;
- (f) which, in the reasonable opinion of the Asset Manager or the Principal, is required to be disclosed to:
 - (i) any actual or prospective financier or investor in connection with the Project;
 - (ii) any officers, employees, professional advisers, auditors or consultants of any actual or prospective financier or investor in connection with the Project to enable them properly to carry out their duties;
 - (iii) any insurer in respect of the Project;
 - (iv) any of the Asset Manager's or the Principal's, officers, employees, professional advisers, auditors or consultants; or
 - (v) any person to whom disclosure is reasonably necessary to enable that person to comply with, or exercise its rights under, the AM Documents to which it is a party and any Subcontractors, providing the Subcontractors agree to be bound by the confidentiality obligations which bind the Asset Manager under this clause 29;
- (g) by the Principal that is not Commercially Sensitive Information; or
- (h) without limiting this clause 29.2 or clause 29.6, any disclosure by the Principal's Representative of any AM Document relating to this deed and which the Asset Manager (acting reasonably) has agreed with the Principal's Representative contains no Commercially Sensitive Information.

29.3 Confidentiality deeds poll

The Asset Manager must procure that any of its servants, consultants, Subcontractors or agents engaged in connection with the performance of the AM Services must, if required by the Principal's Representative, execute and deliver to the Principal a confidentiality deed poll in a form reasonably required by the Principal.

29.4 Third Party Confidential Information

Subject to clauses 29.2(a), 29.2(b), 29.2(c) and 29.2(e), the Asset Manager must not disclose (including to those persons or entities identified in clause 29.2(f)) any Third Party Confidential Information without the Principal's prior written consent (which may, at the Principal's absolute discretion, include consent to disclose such information to the Asset Manager's Subcontractors provided that such disclosure is in accordance with any terms the Principal is required to comply with in respect of that Third Party Confidential Information).

29.5 Publicity

- (a) The Asset Manager must not issue any information, publication, document or article for publication concerning the Motorways or the Project or the AM Services in any media (or permit any third party to do so) without the prior written approval of the Principal's Representative (acting reasonably) and only in a manner approved by the Principal's Representative (acting reasonably).
- (b) If the Asset Manager or any of its Subcontractors receives a direct request from the media for comment in respect of any aspect of the Motorways or the Project or the AM Services, the Asset Manager must promptly provide details of such request to the Principal's Representative.

- (c) The Asset Manager must not announce, promote or hold any event, function or party on the Motorways or the Maintenance Site (or permit any third party to do so) without the prior written approval of the Principal (acting reasonably).

29.6 Disclosure by the Principal

- (a) Notwithstanding the other provisions of this clause 29 but subject to clause 29.6(b), the parties acknowledge that:
 - (i) the AM Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (ii) information concerning the AM Documents will be tabled in Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
 - (iii) the AM Documents and information concerning the AM Documents will be published on the Principal's contracts register in accordance with the GIPA Act; and
 - (iv) the Principal or the Principal's Representative may make the AM Documents or any of them available to any person as required by any applicable Law, to the minister (or office of the minister) with responsibility for the Principal or the Project, or for any other legitimate government purpose or process.
- (b) The parties acknowledge that:
 - (i) the Principal will notify the Asset Manager of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
 - (ii) following notification by the Principal in accordance with clause 29.6(b)(i), the Principal will take reasonable steps to consult with the Asset Manager before the Principal discloses the information referred to in clause 29.6(b)(i), including under the GIPA Act; and
 - (iii) if, following:
 - (A) notification by the Principal in accordance with clause 29.6(b)(i); or
 - (B) consultation between the Principal and the Asset Manager in accordance with clause 29.6(b)(ii),the Asset Manager objects to disclosure of some or all of the information referred to in clause 29.6(b)(i) on the basis that it is Commercially Sensitive Information, the Asset Manager must provide details of any such objection within 3 Business Days of the date the Asset Manager received notification from the Principal or the date on which the consultation process concluded (as relevant).
- (c) The Principal may take into consideration any objection received from the Asset Manager pursuant to clause 29.6(b)(iii) in determining whether the information identified by the Asset Manager as Commercially Sensitive Information should be disclosed.
- (d) Nothing in this clause 29.6 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

29.7 Privacy

- (a) Without limiting clause 7.1, the parties must comply with the Privacy Laws in carrying out and implementing the Project and the AM Services.
- (b) Where a party will be collecting or disclosing Personal Information from an individual in connection with the Project, it must:
 - (i) either:
 - (A) ensure that the disclosure is permitted under the Privacy Laws; or
 - (B) procure the consent of the individual to whom that Personal Information relates sufficient to enable such disclosure to occur and to enable the recipient to collect, use, and disclose that Personal Information for the purposes of the Project;
 - (ii) take reasonable steps to ensure that the Personal Information disclosed is accurate, complete and up-to-date; and
 - (iii) take reasonable steps to inform that individual of any matters required by the Privacy Laws.

30. DEFAULT AND TERMINATION

30.1 Events of Default

Each of the following events is an Event of Default:

- (a) the Asset Manager fails to commence or to expeditiously and diligently progress the AM Services or the Asset Manager displays an intention to permanently abandon the AM Services;
- (b) after the:
 - (i) SHT Handover Date, the Asset Manager closes or permits the closure of one or more traffic lanes of the SHT Motorway or the DT Motorway, other than in accordance with clause 18.2; or
 - (ii) Date of WHT Opening Completion the Asset Manager closes or permits the closure of one or more traffic lanes of any of the Motorways, other than in accordance with clause 18.2,(each an **Unauthorised Closure Default**);
- (c) the Asset Manager fails in a material respect to operate, maintain or repair any of the Motorways in accordance with this deed;
- (d) the Asset Manager breaches in a material respect a representation or warranty given by it under this deed, or any other undertaking given by the Asset Manager in an AM Document;
- (e) the Principal is the victim of any fraud or dishonest conduct by the Asset Manager in connection with any of the Motorways or the Project, or the Independent Commission Against Corruption or similar public body determines that the Asset Manager, in performing the AM Services, has engaged in corrupt conduct, collusive pricing or other similar activity;

- (f) the Asset Manager fails to provide any Security Bond in accordance with clauses 10.2 or 10.7 or any other clause of this deed;
- (g) the Asset Manager fails to materially comply with a Law or a change in Law;
- (h) the Asset Manager does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (i) the Asset Manager is in breach of its obligations under clause 18.6 (Reserved control rights) of this deed;
- (j) the Asset Manager is in breach of its obligations under clause 25.5;
- (k) the Asset Manager fails to pay a sum of money due and owing to the Principal in accordance with this deed and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment;
- (l) the aggregate liability of the Asset Manager to the Principal in respect of KPI Adjustments exceeds the Reduction Cap in any Contract Year, and the Principal and the Asset Manager have not agreed in writing to increase the Reduction Cap for that Contract Year within 5 Business Days (provided that any such agreement will not limit the Principal's rights to subsequently rely on this clause 30.1(l) where the threshold is subsequently exceeded);
- (m) the number of KPI Demerit Points accrued (excluding any KPI Demerit Points accrued for failing to meet the "KPI Measurement" in items 4d and 4e of Table 1 of Schedule 24 (Payment Mechanism)):
 - (i) in any period of [REDACTED] (*KPI Failure Period*) exceeds [REDACTED]; and
 - (ii) in the period of [REDACTED] following the end of the KPI Failure Period the number of KPI Demerit Points exceeds [REDACTED]; or
- (n) the Asset Manager defaults in a material respect in the due observance and performance of any of its other obligations under this deed or any other AM Document.

30.2 Notice of default

- (a) Subject to clause 30.2(b), upon the occurrence of an Event of Default, the Principal may, by notice to the Asset Manager, require the Asset Manager to Remedy the Event of Default within such period specified in the notice as is in the opinion of the Principal (acting reasonably) required to Remedy the Event of Default (the **Remedy Period**).
- (b) The parties agree that if an Event of Default is:
 - (i) a failure to pay money, the Remedy Period to be specified by the Principal is 16 Business Days;
 - (ii) a failure to provide Security Bonds as required under this deed, the Remedy Period to be specified by the Principal is 10 Business Days; or
 - (iii) an Unauthorised Closure Default, the Remedy Period to be specified by the Principal is 1 day.
- (c) If the Principal gives the Asset Manager a notice referred to in clause 30.2(a) (a **Remedy Notice**):

- (i) the Asset Manager must comply with the Remedy Notice; and
- (ii) unless urgent action is necessary or the relevant Event of Default is a failure to pay money:
 - (A) the Asset Manager must give the Principal a program and plan (a **Remedy Plan**) to Remedy the Event of Default in accordance with the terms of the Remedy Notice;
 - (B) the Principal must consult with the Asset Manager in good faith to develop and settle that Remedy Plan; and
 - (C) the Asset Manager must thereafter comply with that Remedy Plan.
- (d) If, at any time (other than in relation to an Unauthorised Closure Default), the Asset Manager considers, in good faith, that a Remedy Period is not reasonable:
 - (i) the Asset Manager must immediately give the Principal notice of that fact, including details of its reasons and extension to the Remedy Period which it believes (acting reasonably) is required to Remedy the Event of Default; and
 - (ii) subject to clause 30.2(e), the Principal must, as soon as practicable after receiving a notice under clause 30.2(d)(i), review the Remedy Period,

however, the aggregate Remedy Period will not exceed 20 Business Days.
- (e) If the Asset Manager has given a notice to the Principal under clause 30.2(d)(i) and
 - (i) the Asset Manager is diligently pursuing the Remedy of the Event of Default, including by complying with a Remedy Plan; and
 - (ii) if the SHT Motorway, the DT Motorway and (if the Event of Default the subject of the Remedy Notice occurred after the Date of WHT Opening Completion) the WHT Motorway are open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 18.2),

the relevant Remedy Period will be extended by such period as is, in the opinion of the Principal (acting reasonably but in no event no longer than 20 Business Days), required to Remedy the Event of Default as notified by the Principal to the Asset Manager.

30.3 Step-in by the Principal

- (a) The Asset Manager acknowledges and agrees that the Principal may, at its convenience and in its absolute discretion, elect to:
 - (i) at any time after the occurrence of an Event of Default, provided that the Asset Manager is not complying with clause 30.2(c) for that Event of Default;
 - (ii) at any time after the occurrence of a Remediable Termination Event; or
 - (iii) at any time after the occurrence of an Immediate Termination Event,

elect to:

 - (iv) temporarily assume total or partial management and control of the AM Services;

- (v) access those parts of the Maintenance Site or Extra Land occupied by the Asset Manager; and
 - (vi) take such other reasonable steps (including suspension of the AM Services in whole or in part) as in the reasonable opinion of the Principal necessary or desirable to, at its option, continue the implementation of the AM Services and to minimise the effects of the Event of Default, Remediable Termination Event or Immediate Termination Event.
- (b) The Principal will give prior written notice to the Asset Manager of its election to exercise its rights under clause 30.3(a), except in the case of an event as described in clause 8.5(a)(ii).
- (c) During the exercise of the Principal's rights under this clause 30.3, the Asset Manager's rights and obligations under this deed are suspended to the extent necessary to enable the Principal to exercise those rights.
- (d) Pursuant to clause 30.3(a), the Principal may do:
- (i) all things which the Asset Manager is obliged to do under or in connection with this deed, any other AM Document to which it is a party or any Law, and things which the Principal is authorised or empowered to do with respect to the Asset Manager under any AM Document or any Law; and
 - (ii) all things necessary for performing the AM Services in accordance with this deed.
- (e) The Asset Manager:
- (i) irrevocably appoints the Principal, and the Principal's nominees from time to time, jointly and severally as the Asset Manager's attorney with full power and authority to exercise the Principal's rights under clause 30.3(a) provided that the Principal properly considers that in each instance the power or authority which it or its nominee proposes to exercise as attorney is reasonable and necessary for the carrying out of the AM Services or to minimise the effects of the Event of Default, Remediable Termination Event or overcome the consequences of an Immediate Termination Event; and
 - (ii) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Asset Manager.
- (f) The Asset Manager will use its best endeavours to assist the Principal wherever and however reasonably possible in the exercise of the Principal's rights under this clause 30.3 (including facilitating ongoing access to any support or other services provided by employees, Subcontractors or third parties).
- (g) The exercise by the Principal of its rights under this clause 30.3 (or the cessation of such exercise) will not affect any other power of the Principal or any other right of the Principal under any AM Document to which the Principal is a party.
- (h) The Principal may, on 3 Business Days' notice to the Asset Manager, cease to exercise its rights under this clause 30.3.
- (i) Any Loss suffered or incurred by the Principal in taking action referred to in this clause 30.3 will be a debt due and payable from the Asset Manager to the Principal.

30.4 **Termination for convenience by the Principal**

- (a) The Principal may, at any time and for any reason, for its convenience and in its absolute and sole discretion, terminate this deed by giving the Asset Manager not less than 90 Business Days' prior written notice.
- (b) Termination of this deed for convenience will take effect upon the date specified in the notice given in accordance with clause 30.4(a).

30.5 **Termination by the Principal**

- (a) If:
 - (i) an Event of Default is not Remedied within the Remedy Period (as extended if at all in accordance with clause 30.2(e)); or
 - (ii) at any time during the relevant Remedy Period (as extended if at all in accordance with clause 30.2(e)) in which an Event of Default is subsisting and has not been Remedied, the Asset Manager is not diligently pursuing a Remedy of the Event of Default, including by complying with the Remedy Plan;

(each a **Remediable Termination Event**), the Principal may give the Asset Manager 15 Business Days' prior notice of its intention to terminate this deed. During this 15 Business Day period the Asset Manager will have a right to Remedy, or procure the Remedy of, the Remediable Termination Event.

- (b) If at the expiration of the 15 Business Day period following the notice of a Remediable Termination Event, the Remediable Termination Event has not been Remedied by the Asset Manager, the Principal may thereafter terminate this deed by, and with effect from, notice to the Asset Manager.

- (c) If:
 - (i) an Insolvency Event occurs in relation to the Asset Manager, the AM Guarantor, or any entity that comprises the Asset Manager or the AM Guarantor (in each case whether or not the Asset Manager is then in breach of this deed) and the Asset Manager or the AM Guarantor is not able to satisfy the Principal (acting in its absolute discretion) within 5 Business Days (or any longer period agreed to by the Principal acting in its absolute discretion) of the Insolvency Event occurring that this deed should not be terminated;

■ [REDACTED]

- (iii) the AM Guarantee is void or voidable and is not replaced within 5 Business Days of the Principal notifying the Asset Manager of the need for a replacement AM Guarantee;
- (iv) a Security Bond is void or voidable and is not replaced in accordance with clause 10.5 within 5 Business Days of the Principal notifying the Asset Manager of the need for a replacement Security Bond;

- (v) the Asset Manager abandons the AM Services; or
 - (vi) the Asset Manager is in breach of its obligations under clause 36,
- (each an **Immediate Termination Event**), the Principal may immediately terminate this deed by notice to the Asset Manager.
- (d) Upon termination of this deed (other than termination under clauses 30.4, 30.7 and 30.8) the Principal will not be liable to pay any compensation or other moneys to the Asset Manager by reason of that termination (including, where the Principal does not exercise the right to require novation of a Subcontract, any amounts payable by the Asset Manager to the relevant Subcontractor following termination of that Subcontract), other than an amount equal to the value of the AM Services performed by the Asset Manager up to the date of termination for which payment has not been received by the Asset Manager as at the date of termination.
 - (e) Upon termination of this deed by the Principal:
 - (i) the Principal may require a novation to the Principal or its nominee of the Significant Subcontracts;
 - (ii) the Asset Manager must:
 - (A) hand over books of account and all other records relating to the Project;
 - (B) hand over all Contract Documentation and Deliverables described in clauses 28.2(a) and 28.2(b);
 - (C) hand over any other documentation relating to the Project within the custody or control of the Asset Manager and its Subcontractors; and
 - (D) do all other acts and things to enable the Principal or any person engaged by the Principal to undertake the AM Services; and
 - (iii) the Asset Manager must peaceably surrender and yield up to the Principal the Maintenance Site, any Extra Land and any other land upon which the AM Services are being carried out (including any right, title or interest in them).
 - (f) The Asset Manager acknowledges that nothing in this clause 30.5 obliges the Principal to require or consent to the novation of any Significant Subcontract to the Principal.

30.6 **Right to damages**

Subject to clause 30.5(d), any termination of this deed under this clause 30 will not in any way prejudice either party's rights to claim and recover damages for any breach of contract by the other party.

30.7 **Termination by the Asset Manager**

The Asset Manager may terminate this deed by giving the Principal 40 Business Days' prior notice if the Principal fails to pay the Asset Manager an aggregate amount greater than ■■■■■ certified as being due and payable in a Payment Statement within 40 Business Days of the amount becoming due and payable and such non-payment is not remedied by the end of the 40 Business Day notice period after the Asset Manager's notice under this clause 30.7.

30.8 **Termination for Uninsurable Force Majeure Event**

Notwithstanding any other provision of this deed, if an Uninsurable Force Majeure Event exists, or the consequences of the Uninsurable Force Majeure Event exist, for a continuous period of more than 180 Business Days, the Principal may in its absolute discretion terminate this deed at any time after that 180 Business Day period by giving a notice to that effect to the Asset Manager, after which this deed will terminate and clause 30.9(b) will apply.

30.9 **Termination payments**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

30.10 **Termination if no Notice to Proceed is issued**

[Redacted]

[Redacted]

[Redacted]

31. **DISPUTE RESOLUTION**

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

32. **FORCE MAJEURE**

32.1 **Force Majeure notice**

(a) If either party alleges or wishes to claim that Force Majeure has occurred (the *Affected Party*), the Affected Party must give the other party prompt notice of the Force Majeure once it becomes aware of the same and the obligations affected.

- (b) Where the Asset Manager is the Affected Party, the notice given pursuant to clause 32.1(a) must set out full particulars of all relevant matters including:
 - (i) details of the Force Majeure;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the Asset Manager has taken and/or proposes to take to remedy the situation;
 - (iv) an estimate of the time during which the Asset Manager will be unable to carry out its obligations due to the Force Majeure;
 - (v) an estimate of the Actual Costs that the Asset Manager will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which the Asset Manager will be able to rely in making good damage caused by the Force Majeure.
- (c) After giving notice under clause 32.1(a) the Asset Manager must continue to provide to the Principal all relevant information pertaining to the Force Majeure.

32.2 Meeting

The parties must meet within 3 Business Days of service of a notice of a Force Majeure event to determine the estimated length of time for which the Force Majeure will continue.

32.3 Suspension of obligations

- (a) Subject to clause 32.3(f), if a Force Majeure event occurs, the obligations under this deed of the Affected Party (other than its obligations under this clause 32) which are affected by the Force Majeure will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure.
- (b) If a Force Majeure event occurs and a notice under clause 32.1(a) is issued, no party will be in default of its obligations under this deed in so far as the failure or delay in the observance or performance of those obligations by that party is caused by the Force Majeure event specified in the notice under clause 32.1(a).
- (c) The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure event.
- (d) The Principal will not be obliged to provide any financial relief to the Asset Manager during the period of suspension.
- (e) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under clause 32.3(a), the Affected Party must recommence the performance of those obligations.
- (f) Where the Affected Party is the Asset Manager, clause 32.3(a) will only apply to suspend the Asset Manager's obligation under clause 9.1(e)(ii) to keep all traffic lanes of the Motorways open where the occurrence of the Force Majeure event prevents the safe passage of vehicles.

32.4 Duty to remedy Force Majeure

The Asset Manager must remedy and Mitigate the effects of a Force Majeure event promptly in accordance with clause 25.9.

33. **END OF TERM**

33.1 **End of Term**

Subject to the other provisions of this deed, on the last day of the Term, the Asset Manager acknowledges and agrees that it must:

- (a) peaceably surrender and yield up to the Principal or its nominee, the Motorways, the Maintenance Site, any Extra Land and any other land upon which the AM Services are being carried out (including any right, title or interest in them) in a fully functional condition which complies with the AM Services Specification and the AM Services Documents;
- (b) deliver to the Principal:
 - (i) the then current versions of the AM Services Documents;
 - (ii) all furniture, fittings, plant and equipment required to operate, maintain and repair the Motorways; and
 - (iii) the then current Contract Documentation and Deliverables;
- (c) pay to the Principal any insurance proceeds from any insurances for reinstatement or replacement of the AM Services or the Motorways (as applicable) to the extent not already reinstated or replaced and assign to the Principal any rights available to the Asset Manager under those insurances; and
- (d) do all other reasonable acts and things to enable the Principal to operate the Motorways at a level at least equal to that in effect immediately before the termination of this deed with minimum disruption to its use as a toll road.

33.2 **Handover Condition**

- (a) Within 60 Business Days after the end of the Term, the Principal will determine the condition of each Asset as at the end of the Term, using methodology for the determination which is consistent with relevant industry practice at the time which may include using:
 - (i) any technology used at the time for the purpose of making such determination;
 - (ii) observations from the joint inspections carried out under clause 18.12(a) or section 10.3 of the AM Services Specification; or
 - (iii) records kept by the Asset Manager during the Term as required by the AM Services Specification.
- (b) If the Principal believes that Handover Condition, NTP Handover Condition or Termination Handover Condition (as applicable) has not been achieved for all Assets, then the Principal may give notice to this effect to the Asset Manager specifying:
 - (i) the extent to which it believes that Handover Condition, NTP Handover Condition or Termination Handover Condition (as applicable) has not been achieved for all Assets; and
 - (ii) the cost of the measures necessary to ensure that all Assets satisfy the requirements of Handover Condition, NTP Handover Condition or Termination Handover Condition (as applicable).

- (c) The Asset Manager may within:
- (i) a reasonable time of receipt of the Principal's notice under clause 33.2(b); or
 - (ii) in any event, 60 Business Days of receipt of the Principal's notice under clause 33.2(b),
- carry out all necessary work to ensure that all Assets satisfy the requirements of Handover Condition, NTP Handover Condition or Termination Handover Condition (as applicable):
- (iii) within and at such time as may be required by the Principal;
 - (iv) in accordance with the requirements of any relevant Authority;
 - (v) so as to minimise the impact on the use of the Motorways; and
 - (vi) in a manner which causes as little inconvenience as possible to:
 - (A) users of the Motorways;
 - (B) users of any access; and
 - (C) the adjacent community.
- (d) If the Asset Manager does not carry out the work referred to in clause 33.2(b) within the time specified, the Asset Manager must pay the Principal (without limiting the provisions of clause 17) the costs determined by the Principal under clause 33.2(b)(ii) as a debt due and payable by the Asset Manager to the Principal.

33.3 **Handover**

- (a) When the Asset Manager considers it has completed Handover, the Asset Manager must notify the Principal.
- (b) Within 20 Business Days after receipt of a notice under clause 33.3(a), the Principal must notify the Asset Manager:
 - (i) if the Principal believes that Handover has been completed, of the date on which the Principal believes that the Asset Manager achieved Handover; or
 - (ii) if the Principal believes that Handover has not been completed, the reasons why it believes that Handover has not been completed.

33.4 **Effect of notice of Handover**

A notice issued under clause 33.3(b)(i) will not:

- (a) constitute approval by the Principal of the Asset Manager's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that any of the Motorways complies with this deed; or
- (c) prejudice any rights or powers of the Principal.

33.5 **Obligations after end of the Term**

For a period of 12 months after the end of the Term, the Asset Manager must ensure that it has competent and experienced personnel available to consult with the Principal on any

aspect of the operation, maintenance and repair of the Motorways where required by the Principal.

34. REPRESENTATIONS, WARRANTIES AND COVENANTS

34.1 Representations and warranties by the Asset Manager

The Asset Manager makes the following continuing representations and warranties for the benefit of the Principal:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each AM Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each AM Document to which it is expressed to be a party, to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into each such document is a proper exercise of power;
- (c) its obligations under each AM Document to which it is expressed to be a party are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (d) it subsists and is properly constituted;
- (e) it is not a trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) it is not in default of its material obligations under any AM Document;
- (g) the execution, delivery and performance of each AM Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (h) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (i) no litigation (which has not been disclosed to the Principal in writing prior to the Commencement Date), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any AM Document to which it is expressed to be a party;
- (j) is reputable and has sufficient experience and expertise in successfully operating, maintaining and repairing (as applicable) tollways, freeways or other roads;
- (k) has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this deed; and

- (l) is of sufficiently high financial and commercial standing to perform its obligations to the standards required by this deed.

34.2 Representations and warranties by the Principal

The Principal makes the following continuing representations and warranties for the benefit of the Asset Manager:

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

34.3 Exclusivity of the Asset Manager

- (a) On the Commencement Date, the Asset Manager warrants that it has no interest or duty which conflicts with, or may conflict with, its functions as the Asset Manager, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion, and subject to any conditions specified by the Principal.
- (b) The Asset Manager must not, and must procure that:
 - (i) any Related Party of the Asset Manager; and
 - (ii) any employee, agent, subcontractor and consultant who is involved in the provision of the AM Services,does not, at any time during the Term:
 - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - (A) with any Main Works Contractor or any of their Associates in relation to the Project; or
 - (B) in the Project; or
 - (iv) provide services to or advise any other person in connection with the Project, other than the provision of the AM Services, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion, and subject to any conditions specified by the Principal.

- (c) The Asset Manager agrees that:
 - (i) having regard to the AM Services, this clause 34.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project and to ensure the best value for money of the Project; and
 - (ii) damages may not be a sufficient remedy for a breach of this clause 34.3 and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Asset Manager, in addition to any other remedies available at Law or in equity.

35. **AMENDMENTS TO OTHER AM DOCUMENTS**

35.1 **Variations to this deed**

Except in respect of any Change carried out in accordance with clause 13, this deed may only be varied by a deed executed by or on behalf of the Principal and the Asset Manager.

35.2 **Amendments to other AM Documents**

- (a) The Asset Manager must not at any time after the execution of this deed either:
 - (i) make any modification, variation or amendment of a material nature to, or terminate or surrender; or
 - (ii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,

any one or more of the AM Documents to which it is a party (**Amendment**), without first obtaining the consent of the Principal.
- (b) In the event that the Asset Manager desires an Amendment it must submit to the Principal a written request seeking the Principal's consent. The request must set out:
 - (i) the Amendment and the relevant reasons for the Amendment;
 - (ii) the response or anticipated response of any other party to the AM Documents regarding the Amendment;
 - (iii) the response or anticipated response of any assignee of the AM Documents to the Amendment; and
 - (iv) copies of any documents relevant to the Asset Manager's request.
- (c) The Principal must advise the Asset Manager, within 35 Business Days after receiving the Asset Manager's written request under clause 35.2(b), that:
 - (i) it consents to the Amendment;
 - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
 - (iii) it requires additional information from the Asset Manager regarding the Amendment, in which event:
 - (A) the Asset Manager must provide the additional information sought by the Principal within a further period of 5 Business Days; and

- (B) this clause 35.2(c) will reapply as if the additional information were the written request under clause 35.2(b).

36. ASSIGNMENT AND CHANGE IN CONTROL

36.1 Entitlement to assign

- (a) The Asset Manager must not sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in any of the AM Documents other than:
- (i) with the prior written consent of the Principal; or
 - (ii) pursuant to a general security arrangement entered into by the Asset Manager with a financier in the ordinary course of the Asset Manager's business.
- (b) The Principal may assign or novate:
- (i) this deed; or
 - (ii) any of its interests, rights and obligations under or in connection with the AM Documents, the Security Bonds or the Project,
- and may do so in its absolute discretion and without consent from the Asset Manager if the assignment or novation is to:
- (iii) an entity described in (a) of the definition of Authority;
 - (iv) any corporation which is a wholly-owned subsidiary (as that term is defined in section 9 of the *Corporations Act 2001* (Cth) of an entity described in (a) of the definition of Authority;
 - (v) any entity established with a purpose of operating and/or maintaining all or part of any or all of the Motorways; or
 - (vi) an entity providing any debt or equity facility, financial arrangement or financial accommodation for the purposes of the Project (including, where the context requires, any agent or trustee of such entity).
- (c) In circumstances other than those set out in clause 36.1(b) [REDACTED], the Principal may not assign or novate:
- (i) this deed; or
 - (ii) any of its interests, rights and obligations under or in connection with the AM Documents, the Security Bonds or the Project,
- without the prior written consent of the Asset Manager (such consent not to be unreasonably withheld).
- (d) In the case of a novation, the Asset Manager must, if requested by the Principal, execute a deed of novation in the form of Schedule 9 (Form of Deed of Novation) and do any other thing necessary to give effect to the novation.
- (e) In the case of an assignment, the Asset Manager must, if requested by the Principal, execute a deed of assignment and do any other thing necessary to give full effect to the assignment.

- (f) In the case of novation or assignment, the Asset Manager must do all things necessary to ensure that the novatee or assignee has the benefit of:
 - (i) the AM Insurances;
 - (ii) all unconditional undertakings provided by the Asset Manager under this deed;
 - (iii) the AM Guarantees; and
 - (iv) the licence of Intellectual Property Rights at clause 28.2.

36.2 **Change in Control of the Asset Manager**

- (a) The Asset Manager must ensure that there is no Change in Control of the Asset Manager or any entity that comprises the Asset Manager without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Asset Manager must notify the Principal in writing of any Change in Control of the Asset Manager or any entity that comprises the Asset Manager, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 36.2(d), in relation to the Change in Control of the Asset Manager or the relevant entity that comprises the Asset Manager.
- (c) The Principal's approval is not required for a Change in Control of the Asset Manager or any entity that comprises the Asset Manager arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Asset Manager gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Asset Manager or an entity that comprises the Asset Manager where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the Asset Manager or the relevant entity that comprises the Asset Manager:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Project; or
 - (ii) as a result of the Change in Control of the Asset Manager or an entity that comprises the Asset Manager, the Asset Manager will no longer:
 - (A) have sufficient expertise and ability; or

- (B) be of sufficiently high financial and commercial standing,
to properly carry out the obligations of the Asset Manager under the AM Documents.
- (e) If a Change in Control of the Asset Manager or any entity that comprises the Asset Manager occurs without the permission of the Principal (other than a Change in Control permitted under clause 36.2(c)), the Asset Manager acknowledges that the Principal may terminate this deed by notice in writing to the Asset Manager.
- (f) The Principal's approval of a Change in Control of the Asset Manager or any entity that comprises the Asset Manager will not relieve the Asset Manager of any of its obligations under this deed.

36.3 Change in control of an AM Guarantor

- (a) Subject to the terms of this clause 36.3, the Asset Manager must ensure that there is no Change in Control of an AM Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Asset Manager must notify the Principal in writing of any Change in Control of an AM Guarantor, and provide:
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 36.2(d), in relation to the Change in Control of that AM Guarantor.
- (c) The Principal's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Asset Manager gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an AM Guarantor where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the relevant AM Guarantor:
 - (A) is not solvent and reputable;
 - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Project; or
 - (ii) as a result of the Change in Control, the relevant AM Guarantor will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the AM Guarantor under relevant AM Documents.

- (e) If a Change in Control of an AM Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 36.3(c)), the Asset Manager acknowledges that the Principal may terminate this deed by notice in writing to the Asset Manager.
- (f) The Principal's approval of a Change in Control of an AM Guarantor will not relieve the Asset Manager of any of its obligations under this deed.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

37. EXPENSES AND STAMP DUTIES

37.1 Expenses

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

37.2 Stamp duties

- (a) The Principal must reimburse the Asset Manager for:
 - (i) all stamp, registration and similar taxes that are payable, required to be paid or determined to be payable by the Asset Manager to any relevant NSW Government Authority or determined to be payable (**Stamp Duty**); or
 - (ii) interest, fines and penalties payable to, or required to be paid by, or determined to be payable by the Asset Manager to any appropriate NSW Government Authority in connection with Stamp Duty (except to the extent arising from a breach of Law by the Asset Manager),

assessed in connection with the execution, delivery, performance or enforcement of this deed or any AM Document or any payment receipt or other transaction by them at AM Close.

- (b) Any amount payable by the Asset Manager under clause 37.2(a) will be paid by the Principal within 25 Business Days after submission by the Asset Manager to the Principal of a notice of assessment, together with copies of receipts or other documentation, satisfactory in all respects to the Principal, evidencing the payment of the relevant taxes in respect of Dutiable Transactions.

38. NOTIFICATION OF CLAIMS

38.1 Notice of Change

- (a) If the Asset Manager believes that any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:
- (i) within 3 Business Days after receiving notice of the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to the Principal's Representative that sets out:
 - (A) that it considers the Direction constitutes or involves a Change;
 - (B) details of the relevant Direction; and
 - (C) details of why it considers the Direction constitutes or involves a Change; and
 - (ii) within 25 Business Days after giving the notice under clause 38.1(a)(i) or such longer period as the Principal's Representative may direct, submit a written Claim to the Principal's Representative which includes detailed particulars of:
 - (A) why the Asset Manager believes the Direction constitutes or involves a Change;
 - (B) the details specified in section 1.2 of the Change Procedure;
 - (C) the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (D) the provisions of this deed or other legal basis upon which the Claim is based; and
 - (E) the amount claimed and how it has been calculated, including detailed information supporting the calculation,

failing which the Asset Manager will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.
- (b) Despite the fact that the Asset Manager considers that a Direction by the Principal's Representative constitutes or involves a Change, the Asset Manager must continue to carry out the AM Services in accordance with this deed, including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 38.1(a).
- (c) If the Asset Manager issues a notice under clause 38.1(a), the Principal may:
- (i) confirm that the Direction constitutes or involves a Change, or entitles the Asset Manager to make a Claim, by the giving of a notice under this clause 38.1(c)(i), in which case the Asset Manager must comply with the Direction;

- (ii) deny that the Direction constitutes or involves a Change, or entitles the Asset Manager to make a Claim, by the giving of a notice under this clause 38.1(c)(ii), in which case the Asset Manager:
 - (A) may within 8 Business Days after the receipt of the notice issue a notice of dispute under the Dispute Resolution Procedure; and
 - (B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
- (iii) withdraw the Direction by giving a notice under this clause 38.1(c)(iii).
- (d) If within 25 Business Days after first receipt of the Claim under clause 38.1(a)(ii), the Principal's Representative has not taken any action under clause 38.1(c), the Principal's Representative will be deemed to have given a notice under clause 38.1(c)(ii).

38.2 Notice of other Claims

- (a) If the Asset Manager wishes to make a Claim against the Principal in respect of any Direction of the Principal or the Principal's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed or the AM Services, including anything in respect of which:
 - (i) the Asset Manager is otherwise given an express entitlement under this deed; or
 - (ii) this deed expressly provides that an amount is to be paid to the Asset Manager,

the Asset Manager must give the Principal's Representative the notice required by clause 38.3(a) and a Claim in accordance with clause 38.3(b).
- (b) The Asset Manager must notify the Principal's Representative:
 - (i) of the existence of any Claims or Disputes of which it is aware that have arisen with any Significant Subcontractor, if the claims process or dispute resolution process under that Subcontract has been activated by any party to it; and
 - (ii) when and how any such Claims or Disputes have been resolved.

38.3 Prescribed notices

- (a) Any notice referred to in clause 38.2 must:
 - (i) be provided not later than 10 Business Days after the later of:
 - (A) the first occurrence of; or
 - (B) when the Asset Manager first became aware of, or ought reasonably to have first become aware of,

the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:

- (A) that the Asset Manager proposes to make a Claim; and
 - (B) the Direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 38.2 must:
- (i) subject to clause 38.3(c), be provided not later than 15 Business Days after giving the notice under clause 38.3(a); and
 - (ii) include:
 - (A) detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated, including detailed information supporting the calculation.
- (c) The Principal may at its sole discretion extend the period in which the Asset Manager must provide its written Claim under clause 38.3(b).

38.4 **Continuing events**

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim referred to in clause 38.2 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact, matter or thing are continuing, the Asset Manager must continue to give the information required by clause 38.3(b) every 35 Business Days after the written Claim under clause 38.3(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

38.5 **Bar**

If the Asset Manager fails to comply with clauses 11.9, 13, 30.7, 32.1 or this clause 38:

- (a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the Asset Manager; and
- (b) the Asset Manager will be barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant Direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

38.6 **Other provisions unaffected**

Nothing in clauses 38.1 to 38.5 will limit the operation or effect of any other provision of this deed which requires the Asset Manager to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

39. **NSW GUIDELINES**

39.1 **NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 39 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

39.2 **Primary Obligation**

- (a) The Asset Manager must, in carrying out the AM Services:
 - (i) assume sole responsibility for and manage all aspects of industrial relations for the AM Services;
 - (ii) keep the Principal's Representative fully and properly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the AM Services; and
 - (iii) comply with the AM Services Documents to the extent relevant to the AM Services.
- (b) The Asset Manager must at all times comply with, and meet, any obligations imposed by, the NSW Guidelines to the extent relevant to the AM Services.
- (c) The Asset Manager must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines, to the extent relevant to the AM Services, and of remedial action taken, within 20 hours of becoming aware of the possible non-compliance.
- (d) Where the Asset Manager engages a Subcontractor, the Asset Manager must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 39, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines to the extent relevant to the activities performed by that Subcontractor.
- (e) The Asset Manager must not appoint or engage another party in relation to the AM Services where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

39.3 **Access and information**

- (a) The Asset Manager must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities to the extent relevant to the AM Services.
- (b) The Asset Manager must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Asset Manager, including the Maintenance Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Project;
 - (v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines by the Asset Manager, its Subcontractors and related entities.

(c) The Asset Manager and its related entities must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means, and ensure its related entities do the same.

39.4 **Sanctions**

(a) The Asset Manager warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.

(b) The Asset Manager acknowledges that if the Asset Manager does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.

(c) The Asset Manager acknowledges and agrees that where a sanction is imposed:

(i) it is without prejudice to any rights that would otherwise accrue to the parties; and

(ii) the State of NSW (through its agencies, ministers and the CCU) is entitled to:

(A) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and

(B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Asset Manager, or its related entities, in respect of work to which the NSW Guidelines apply.

39.5 **Compliance**

(a) The Asset Manager bears the cost of ensuring its compliance with the NSW Guidelines to the extent relevant to the AM Services, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Asset Manager is not entitled to make, and neither the Principal nor the State of NSW will be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the Asset Manager's compliance with the NSW Guidelines.

(b) The Asset Manager acknowledges and agrees that compliance with the NSW Guidelines does not relieve the Asset Manager from responsibility to perform the AM Services or any other obligation under this deed, or from liability for any deficiency or noncompliance in the AM Services or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.

(c) Where a change to this deed or the AM Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Asset Manager must immediately notify the Principal (or its nominee) of the change, or likely change and specify:

(i) the circumstances of the proposed change;

- (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
- (iii) what steps the Asset Manager proposes to take to Mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or a "Work Health and Safety Management Plan").

The Principal will direct the Asset Manager as to the course it must adopt within 15 Business Days of receiving notice.

39.6 **Workplace Relations Management Plan**

The Asset Manager must:

- (a) prepare a workplace relations management plan which addresses the requirements of this deed, including the matters set out in section 6 of the NSW Guidelines and part 6 of the Building Code; and
- (b) comply with the Workplace Relations Management Plan.

40. **COMMONWEALTH GOVERNMENT REQUIREMENTS**

40.1 **Building Code**

- (a) The Asset Manager:
 - (i) declares as at the Commencement Date; and
 - (ii) must ensure during the Term of this deed,

that, in relation to the Commonwealth Works, it (and must procure that its Subcontractors and consultants):
 - (iii) complies with the Building Code;
 - (iv) is not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction;
 - (vi) has not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIIP Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
 - (vii) only uses products in relation to the Commonwealth Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (viii) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (ix) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Commonwealth Works.
- (b) Without limiting and notwithstanding clause 40.1(a)(iii), the Asset Manager will ensure that remedial action is taken to rectify any behaviour on the part of it and its Subcontractors that is non-compliant with the Building Code.

- (c) The Asset Manager acknowledges and agrees that compliance with the Building Code does not relieve the Asset Manager from any responsibility or obligation under this deed, or from liability for any Defect in Commonwealth Works arising from compliance with the Building Code.
- (d) The Asset Manager must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (e) The Asset Manager acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors and consultants) comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIIP Act;
 - (ii) to interview any person under section 74 of the BCIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the of the BCIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (f) The Asset Manager must not enter into a Subcontract for any aspect of the Commonwealth Works unless:
 - (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Asset Manager agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 40.
- (g) The Asset Manager must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 40.1(f) promptly upon request.
- (h) The Asset Manager must maintain adequate records of the compliance with the Building Code by:
 - (i) the Asset Manager;
 - (ii) its Subcontractors;
 - (iii) its consultants; and
 - (iv) any related entity (as that term is defined in subsection 3(2) the Building Code) of the Asset Manager.

40.2 **WHS Accreditation**

The Asset Manager:

- (a) represents and warrants that the Asset Manager is accredited under the WHS Accreditation Scheme;

- (b) must comply with all of the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIIP Act) is carried out; and
- (c) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Maintenance Site impose obligations on those Subcontractors that enable the Asset Manager to comply with its obligations under this clause 40.2.

41. **NOTICES**

41.1 **How to give a notice**

A notice or consent under this deed (**Notice**):

- (a) given before the date referred to in clause 41.2(a) is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it (unless the Notice is sent from the email address of either the Principal's Representative or the Asset Manager's Representative, in which event the Notice is deemed to be signed by the Principal's Representative or the Asset Manager's Representative (as applicable));
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (B) subject to clause 41.1(b), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; or
- (b) given on and from the date referred to in clause 41.2(a) is only effective if it is:
 - (i) subject to clause 41.1(c), sent through the PDCS in accordance with the requirements set out in clause 41.7;
 - (ii) in writing, signed by or on behalf of the person giving it;
 - (iii) addressed to the person to whom it is to be given; and
 - (iv) in circumstances where the PDCS is temporarily disabled or not operating, issued in accordance with clause 41.1(c); and
- (c) in the case of Notices which have been sent in accordance with clauses 41.1(a)(iii)(B) or 41.1(b) under clauses 3, 10.5, 11.7, 11.8, 13, 24.2, 25, 30, 31, 32, 35, 36.2 or 36.3 in addition to the Notice sent pursuant to clause 41.1(a)(iii)(B) or 41.1(b), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 41.1(a)(iii)(A).

41.2 **PDCS**

- (a) At any time and from time to time the Principal's Representative may notify the Asset Manager that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out the commencement date for use of the PDCS.
- (b) The Asset Manager must:

- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (iv) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 41.1(b)(iv) to the Principal's Representative through the PDCS.
- (c) No party has any liability to the other for any Losses a party may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Asset Manager will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Asset Manager's access to or use of the PDCS or any failure of the PDCS.

41.3 **Effectiveness of notices**

- (a) A Notice referred to in clause 41.1(c) will not be effective unless it is delivered in accordance with clause 41.1(a)(iii)(A).
- (b) A Notice issued pursuant to clause 41.1(a)(iii)(B) and a Notice issued pursuant to clause 41.1(a)(iii)(A) must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

41.4 **When a notice is given**

A Notice that complies with this clause 41 is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – 2 Business Days after posting; or
 - (ii) to or from a place outside Australia – 5 Business Days after posting;
- (b) subject to clause 41.4(d), if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party (as applicable) sending the email from the recipient; and
- (c) subject to clause 41.4(d), if it is sent through the PDCS, at the time recorded on the PDCS as being the time at which the Notice was sent, unless that delivery is made on a non-Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and

41.7 **Communications by the PDCS**

With respect to Notices sent through the PDCS:

- (a) only the text in any Notice, or subject to clause 41.7(b), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
- (b) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (i) .pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

42. **GENERAL**

42.1 **Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 42.1(b)(i).

42.2 **Cost**

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

42.3 **Taxes**

Subject to clause 23.1 and 37.2 and without limiting clause 7.1, the Asset Manager must pay all Taxes which may be payable in respect of the AM Services, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

42.4 **Indemnity**

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

- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Each party must take reasonable steps to Mitigate any Loss suffered by it which is the subject of an indemnity given in its favour.

42.5 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

42.6 Non reliance

Without limiting clauses 11.5 and 11.6, the Asset Manager:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation (other than this deed) made by or provided to the Asset Manager by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 42.6(a) and 42.6(b).

42.7 Entire agreement

To the extent permitted by Law, this deed and the other AM Documents:

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

42.8 Counterparts

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

42.9 Unlimited discretion

- (a) Except as expressly otherwise provided in this deed (including in clause 42.9(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 42.9(a):
 - (i) except as expressly provided in this deed (including in clause 42.9(c)), neither the Principal nor the Principal's Representative will be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,

any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;

- (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
 - (iii) a Direction (including an absolute or sole discretion) or power of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative whether it is exercised or made:
 - (A) independently;
 - (B) after consultation with the Principal and its advisers; or
 - (C) as directed by the Principal;
 - (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
 - (A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or
 - (B) entitle the Asset Manager to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and
 - (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.
- (c) Nothing in this clause 42.9 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

42.10 **Joint and several liability**

- (a) The obligations of the Asset Manager, if more than one person, under this deed, are joint and several and each person constituting the Asset Manager acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any one or all of them.
- (b) The rights of the Asset Manager, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the Asset Manager (and not severally or jointly and severally).
- (c) Any payment by the Principal under this deed to any account nominated in writing by the Asset Manager, or failing such nomination, to any one or more persons constituting the Asset Manager, will be deemed to be payment to all persons constituting the Asset Manager.

- (d) The Asset Manager may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the Asset Manager.

42.11 **No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed or any other AM Document to which the Principal or the Asset Manager are expressed to be parties will be construed or interpreted as:

- (a) conferring a right in favour of either the Principal or the Asset Manager to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) creating a partnership, joint venture or fiduciary relationship between the Principal and the Asset Manager.

42.12 **Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by any party to this deed will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) Any waiver or consent given by a party under this deed will only be effective and binding on the other party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the other party to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim,

will operate as a waiver of:
 - (iii) another breach of that term or of a breach of any other term of this deed; or
 - (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

42.13 **No relief from obligations**

The Asset Manager will not be relieved from any of its Liabilities or responsibilities under this deed (including under clause 17) or otherwise according to Law nor will the rights of the Principal against the Asset Manager, whether under this deed or otherwise according to Law be limited or otherwise affected by or as a consequence of:

- (a) any release, authorisation, approval or agreement by the Principal's Representative or any other person acting on behalf of the Principal or the Principal's Representative; or
- (b) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect.

42.14 **Further acts and documents**

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

42.15 Provisions limiting or excluding liability

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

42.16 Survival of certain provisions

Without limiting clause 42.4(a):

- (a) any provisions of this deed which are expressed to or by implication from its nature is intended to survive termination including clauses 1, 10.3, 10.4, 10.6, 11.6, 18.13, 20.4, 20.13, 23.2, 25.2, 25.13(c), 26.3, 26.4, 27, 28.1, 29, 31, 33, 41, 42.1, 42.4, 42.5, 42.7, 42.10, 42.15, 42.18, 42.19, 42.22 and this clause 42.16 (together the **Surviving Clauses**) will survive rescission, novation, termination or expiration of this deed;
- (b) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this deed occurring before such rescission or termination;
- (c) no right or obligation of any party will merge on completion of any transaction under this deed, and all rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed; and
- (d) no provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

42.17 PPS Act

The Asset Manager acknowledges and agrees that:

- (a) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with this deed, or any transaction contemplated by this deed, the Principal may at the Asset Manager's expense take all steps that the Principal considers advisable to:
 - (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest ("relevant personal property"); and
 - (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things reasonably necessary to assist the Principal to take the steps described in clause 42.17(a);
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
- (d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would

otherwise apply to an enforcement of a Security Interest in relevant personal property, the Asset Manager and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;

- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) it must immediately notify the Principal if the Asset Manager becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

For the purposes of this clause 42.17, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPS Act.

42.18 **Exclusion of proportionate liability scheme**

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

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

42.19 **Asset Manager not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) the Asset Manager must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Asset Manager (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Asset Manager (whether in contract, tort or otherwise), the Asset Manager will indemnify the Principal against any Loss which the Principal is not able to recover from the Asset Manager because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

42.20 **Subcontracts**

The Asset Manager must:

- (a) in each Subcontract into which it enters for the carrying out of the AM Services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each Subcontract

whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise;

- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of design activities in connection with the AM Services, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (c) require each Subcontractor to use reasonable endeavours to include in any further contract that it enters into with a third party for the carrying out of the AM Services that is not covered by clause 42.20(b), a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of any party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.

42.21 **Moratorium legislation**

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

42.22 **Interest**

If a party does not pay any money payable by it to any other party under this deed by the due date, the first mentioned party must pay interest on that amount on demand by the other party or parties. Interest is:

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

42.23 **Approvals not to affect obligations**

The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature hereunder by the Principal will not, except where this deed expressly provides to the contrary, relieve the Asset Manager from its obligations under this deed.

42.24 **Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency,

references in this Deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

- (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Asset Manager acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Asset Manager will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any Claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 42.24.
- (d) For the purposes of this clause 42.24, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

Executed as a deed.

SIGNED, SEALED AND DELIVERED by
TRANSPORT FOR NSW ABN 18 804 239
602, by its authorised delegate, in the
presence of:

EXECUTED by **VENTIA AUSTRALIA PTY**
LTD ABN 11 093 114 553 in accordance
with section 127 of the *Corporations Act*
2001 (Cth):

Western Harbour Tunnel and Sydney
Harbour Tunnel
Asset Management Deed

Schedules

CONTENTS

SCHEDULES	PAGE
PART A – GENERAL	4
1 Conditions Precedent	5
2 Dispute Resolution Procedure	6
3 Change Procedure	12
4 Not Used	26
5 Key Personnel	27
6 Significant Subcontracts	30
7 Significant Subcontractor Side Deed	31
8 Main Works Interface Deed	36
9 Form of Deed of Novation	37
█ [REDACTED]	█
11 Moral Rights Consent	44
12 Commercially Sensitive Information	47
█ [REDACTED]	█
14 Information Documents	52
PART B – LAND, PROPERTY AND THIRD PARTY AGREEMENTS	66
15 Approvals	67
16 Environmental Requirements	87
17 Site Access Schedule	91
18 Terms of Access	93
19 Property Owner's Certificate	94
20 Requirements of Third Party Agreements	95
PART C – ADMINISTRATIVE	96
21 Project Plans and Asset Management Plans	97
22 Aboriginal Participation Plan Template	99
23 Declaration of Compliance	102
PART D – FINANCIAL	108
24 Payment Mechanism	109
25 Power Usage Adjustment	110
26 Insurances	118
27 Form of Unconditional Undertaking	123
28 Form of AM Guarantee	125
29 NSW Subcontractor's Statements	150
30 NSW Supporting Statement	153
31 Asset Renewal Reserve Fund	155
█ [REDACTED]	█

PART E – TECHNICAL 166

33 AM Services Specification 167

34 Limited Liability Assets 168

35 Main Works Reference Design 174

PART F – TECHNICAL 175

36 Electronic Files 176

PART A – GENERAL

SCHEDULE 1

Conditions Precedent

(Clause 3)

1. All of the AM Documents (other than the Moral Rights Consents, the Main Works P2 Interface Deed and the Significant Subcontracts and Significant Subcontract Side Deeds) have been executed by all parties to them in a form satisfactory to the Principal and all conditions precedent to those AM Documents have been satisfied (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this deed).
2. The insurance policies required by sections 2(e), 2(g) and 2(h) of Schedule 26 (Insurances) have been effected substantially in the form of the wording set out in Schedule 26 or as otherwise agreed by the parties] and a certified copy of these insurance policies has been provided to the Principal.
3. Not used.
4. The Principal has received the duly executed AM Guarantee referred to in clause 10.1 (AM Guarantee).
5. Not used.
6. The Asset Manager has provided to the Principal evidence in a form and substance satisfactory to the Principal that any authorisation required by the Asset Manager or the AM Guarantor in connection with the entry by each of them into any of the AM Documents to which either of them is a party, and the performance of their respective obligations under those AM Documents, has been obtained and is in full force and effect.

SCHEDULE 2

Dispute Resolution Procedure

(Clause 31)

1. Disputes

Unless otherwise expressly provided in this deed, all Disputes between the Principal (on the one hand) and the Asset Manager (on the other hand) must be resolved in accordance with this Dispute Resolution Procedure.

2. Notice of Dispute

Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (a) that it is a notice of Dispute under section 2 of this Schedule 2;
- (b) the Dispute;
- (c) particulars of the Dispute; and
- (d) the position which the party believes is correct,

(Notice of Dispute).

3. Negotiation

- (a) If a Notice of Dispute is served, the persons holding the position of 'Deputy Secretary – Infrastructure and Place' of the Principal (on the one hand) and chief executive officer of the Asset Manager (on the other hand) or their nominees (the **Representatives**) must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the **Negotiation**).
- (b) Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.
- (c) Any agreement reached at the Negotiation must be in writing and signed by both parties.

4. Referral to Expert Determination

If the Dispute has not been resolved within 20 Business Days after the date on which the Notice of Dispute was given (or such longer period of time as the Representatives or the parties may have agreed in writing), then, whether or not a meeting under section 3 has occurred, the Dispute must be and is referred to expert determination in accordance with this Schedule 2.

5. Expert Determination

- (a) The parties agree that any dispute which is referred to expert determination will be determined in accordance with this section 5 and the Resolution Institute Expert Determination Rules (2016 Edition), as modified by Appendix A to this Schedule 2.

- (b) The expert's determination:
 - (i) will be final and binding, unless a party serves a notice of dissatisfaction on the other party within 21 days of the expert's determination; and
 - (ii) must be complied with unless and until it is overturned, reversed, varied or otherwise changed by an arbitral award or judicial determination.

6. Referral to litigation or arbitration after Expert Determination

- (a) If:
 - (i) a notice of dissatisfaction is served under section 5(b)(i); or
 - (ii) the expert fails to make its determination within a period of 50 Business Days after the expert has been appointed by the parties (or within such other period as may be proposed by the expert and approved by both parties),the Principal (in its absolute discretion) may, within five Business Days after:
 - (iii) issuing or receiving a notice of dissatisfaction; or
 - (iv) the expiry of the time period referred to in section 6(a)(ii),(as applicable) issue a notice to the Asset Manager stating that the Dispute is to be determined by litigation pursuant to court proceedings.
- (b) If the Principal does not issue a notice under section 6(a) within the five Business Day period, the Dispute will be referred to arbitration under section 7.
- (c) If a party fails or refuses to comply with the expert's determination, then the other party may, without prejudice to any other rights it may have, refer any such non-compliance as a Dispute, to arbitration under section 7. Sections 2 to 6 will not apply to this type of Dispute.

7. Arbitration

- (a) If any Dispute is referred to arbitration:
 - (i) the seat of the arbitration will be Sydney, Australia;
 - (ii) the arbitration will be conducted in accordance with the Australian Centre for ACICA Arbitration Rules 2021, as modified by Appendix B to this Schedule 2;
 - (iii) the number of arbitrators will be one;
 - (iv) the language of arbitration will be English; and
 - (v) the arbitration will be administered by ACICA.
- (b) The parties agree that an appeal may be made in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) on a question of law arising out of any award issued pursuant to this section 7 this Schedule 2.
- (c) Subject to section 8, this section 7 is governed by the laws of New South Wales, Australia.

8. **Exclusion of Proportionate Liability from Determination or Award**

In respect of any expert or arbitrator appointed in relation to a Dispute, the parties agree that, to the extent permitted by law:

- (a) the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by any Relevant Proportionate Liability Legislation are not conferred or imposed on him or her; and
- (b) the expert or arbitrator (as the case may be) has no power to make any determination or award by applying or considering the provisions of any Relevant Proportionate Liability Legislation.

9. **Urgent Relief**

Nothing in this Schedule 2 will prejudice any right a party may have to seek urgent interlocutory relief or urgent declaratory relief from a court in respect of a Dispute.

10. **Limitation Periods**

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in sections 2 to 7, each party agrees that:

- (a) the limitation period will be deemed to be extended by a period equal to the number of days between the date the Notice of Dispute was served and the later of the date the Negotiation process concludes and the date the expert determination process concludes; and
- (b) it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this section 10 of this Schedule 2.

11. **Survive Termination**

This Dispute Resolution Procedure will survive termination of this deed.

12. **Severance**

If at any time any provision of this Schedule 2 is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Schedule 2; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Schedule 2.

13. **Continuation of Contractual Obligations**

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under this deed.

Appendix A

Modification to the Resolution Institute Expert Determination Rules

Pursuant to sub-Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (2016 Edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

1. **RULE 1 Definitions**

Insert the following new definitions after the definition of the **Process**:

Relevant Proportionate Liability Legislation means:

- (a) Part IV of the Civil Liability Act 2002 (NSW);
- (b) Part IVAA of the Wrongs Act 1958 (VIC);
- (c) Chapter 2, Part 2 of the Civil Liability Act 2003 (QLD);
- (d) Part 1F of the Civil Liability Act 2002 (WA);
- (e) the Proportionate Liability Act 2005 (NT);
- (f) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT);
- (g) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);
- (h) Part 9A of the Civil Liability Act 2002 (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

Relevant Security of Payment Legislation means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (VIC);
- (c) the *Building and Construction Industry Payments Act 2004* (QLD);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

2. **RULE 5 Role of the Expert**

Insert the wording "the Contract, the requirements of procedural fairness," in sub-Rule 1. as follows:

- 1. The Expert will determine the Dispute as an expert in accordance with these Rules, *the Contract, the requirements of procedural fairness*, and according to law.

Sub-Rule 4. will be renumbered sub-Rule 4.(a) and insert after sub-Rule 4(a) additional sub-Rules 4.(b), 4.(c) and 4.(d) as follows:

4. (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must notify the parties immediately in writing.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c) above, unless the parties agree otherwise.

3. **RULE 9 Conduct of the Process**

Insert additional sub-Rule 2A., after sub-Rule 2, as follows:

2A. The rules of evidence do not apply to the Process.

4. **RULE 10 The Expert's Determination**

Replace sub-Rule 3 with the following:

3. Unless otherwise agreed by the parties, the Expert's determination:

- (a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
- (b) must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;
- (c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and
- (d) to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

5. **RULE 12 Waiver of Right to Object**

Delete Rule 12 in its entirety.

6. **RULE 14 Extension of Limitation Period**

Delete Rule 14 in its entirety.

Appendix B

Modification of the ACICA Arbitration Rules

Pursuant to sub-Rule 2.1 of the rules of arbitration of the Australian Centre for International Commercial Arbitration (2021 edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

1. **RULE 40 Waiver of Rules**

Delete Rule 40 in its entirety.

SCHEDULE 3

Change Procedure

(Clause 13)

1. CHANGES PROPOSED BY THE PRINCIPAL

1.1 Change Proposal

(a) The Principal may at any time issue to the Asset Manager a notice titled "Change Proposal" setting out the details of a proposed Change which the Principal is considering, including:

(i) the Principal's proposed requirements for the implementation of the proposed Change;

(ii) the basis (or bases) on which the Principal requires the Asset Manager to price the proposed Change in its Asset Manager Change Notice, which may include:

(A) an adjustment to:

(aa) the AM Service Payment or any component of the AM Service Payment; or

(bb) the timing or amount of any Asset Renewal Reserve Amounts to be deposited by the Principal; or

(B) any other means which the Principal considers appropriate in the circumstances; and

(iii) any other specific information that the Principal requires the Asset Manager to include in its Asset Manager Change Notice or that may be relevant to the preparation of the Asset Manager Change Notice.

(b) The Asset Manager acknowledges that the Principal may issue a Change Proposal (or a Change Order) that decreases, omits, deletes or removes work from the scope of the AM Services (**Excluded Activities**) and may carry out those Excluded Activities itself or may engage another person to carry out the Excluded Activities on its behalf. If the Principal carries out the Excluded Activities itself or engages another person to carry out the Excluded Activities on its behalf, the Principal must pay the Asset Manager an amount equal to:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (c) Subject to section 1.1(b), and except as directed in a Change Order or in respect of a Change contemplated in clauses 7.4 (Planning Approval Change Event), 11.10(h) (Principal access for works or upgrades), 24.2 (Qualifying Change in Law), 24.5 (Change in NSW Government Policy) or 38.1 (Notice of Change) the Asset Manager will not be entitled to:
 - (i) make any Claim against the Principal arising out of, or in any way in connection with, a Change proposed by the Principal; or
 - (ii) vary or change the AM Services.

1.2 **Asset Manager Change Notice**

As soon as practicable and in any event within 20 Business Days after receipt of a "Change Proposal" from the Principal under section 1.1(a), the Asset Manager must provide the Principal with a notice (**Asset Manager Change Notice**) setting out detailed particulars of:

- (a) the Asset Manager's estimate of the Change Costs it will incur, or the Change Savings it will derive, by carrying out the proposed Change, which must be:
 - (i) developed on the basis required by the Principal as set out in the Change Proposal;
 - (ii) substantiated (to the full extent possible) with a detailed breakdown (including an indicative program of when costs will be incurred); and
 - (iii) based on:
 - (A) the rates set out in the WHT LCC Model (to the extent applicable);

- (B) if the rates referred to in section 1.2(a)(iii)(A) are not applicable, the rates set out in the schedule of rates contained in table D.10 of Schedule 24 (Payment Mechanism);
 - (C) if the rates referred to in section 1.2(a)(iii)(B) are not applicable, the rates agreed between the Principal and the Asset Manager; and
 - (D) failing agreement under section 1.2(a)(iii)(C) within 10 Business Days (or such longer period agreed between the parties), as reasonably determined by the Principal's Representative and notified to the Asset Manager;
- (b) the time within which the proposed Change will be implemented;
 - (c) the effect (if any) the Asset Manager anticipates the Change will have on:
 - (i) the performance of the AM Services, including specific details of:
 - (A) the work that will be affected and how and to what extent it will be affected;
 - (B) any changes required to the scope and/or timing of any Major Repair and Replacement Works, which must be supported by an updated draft of the relevant "SHT Forecast Major Repair and Replacement Plan" (as described in the AM Services Specification) or "WHT Forecast Major Repair and Replacement Plan" (as described in the AM Services Specification); and
 - (C) any change to the AM Services Documents which will be required as a result of the proposed Change;
 - (D) any changes to the timing or amount of any Asset Renewal Reserve Amounts to be deposited by the Principal;
 - (ii) the functionality or integrity of the elements of the Motorway (including specific details of the elements of the Motorway that will be affected and how and to what extent the functionality or integrity of those elements will be affected, as well as any impact on the Asset Manager's compliance with the Main Works SWTCs); and
 - (iii) the quality or performance standards (including the KPIs) required by this deed (including specific details of the quality or performance standards affected and how and to what extent they will be affected);
 - (d) any adverse effect which the Change will have on the ability of the Asset Manager to satisfy its obligations under this deed (including any warranties the Asset Manager is required to give under this deed);
 - (e) any other information concerning the proposed Change which the Principal's Representative reasonably requires, including:
 - (i) sufficient detail to allow the Principal to reconsider the need for the Change; and
 - (ii) whether any land in addition to the Maintenance Site is required to implement the Change; and

- (f) the period within which the Asset Manager Change Notice remains valid for acceptance by the Principal, which must be a reasonable period of not less than 25 Business Days after the date of the Asset Manager Change Notice (**Validity Period**).

The Principal will not be obliged to proceed with any Change proposed in a Change Proposal.

1.3 **Asset Manager Change Notice Requirements**

- (a) The Asset Manager must ensure that the Asset Manager Change Notice is prepared:
 - (i) so as to avoid, as far as practicable, the need for a new Approval or a change to an existing Approval for the implementation of the Change;
 - (ii) on an Open Book Basis with respect to the Actual Costs of the Asset Manager (and to this end the Asset Manager must allow the Principal review and audit rights sufficient to verify that the Asset Manager Change Notice has been prepared in accordance with the requirements of this deed (including the definitions of "Change Costs" and "Change Savings"));
 - (iii) assuming the Asset Manager is a willing, efficient and competent provider of the Change in an efficient and competitive market;
 - (iv) in a manner which is consistent with the reasonable requirements of the Principal for the implementation of the Change and which includes any specific information required by the Principal in the Change Proposal;
 - (v) having regard to minimising:
 - (A) the disruption to road users; and
 - (B) any adverse safety impacts of the Change;
 - (vi) in a manner which ensures that all appropriate insurances relevant to the Change are taken out and maintained consistently with those that would have been required by the Principal if the Change had been included in the AM Services as applicable, as at the date of this deed (unless the Principal otherwise determines); and
 - (vii) in a manner so that there is no double counting.
- (b) If the Principal requires the Asset Manager to conduct a tender process for all or part of the works which would be required to effect the Change:
 - (i) the tender process must be conducted consistently with the NSW Government's procurement policies in their form as at the date of the Principal's Change Proposal (subject to necessary changes agreed between the Principal and the Asset Manager (acting reasonably) to reflect that the Asset Manager is a private company rather than an Authority); and
 - (ii) the Asset Manager must:
 - (A) have regard to the outcome of the tender process (including the tender costs) in the Asset Manager Change Notice; or
 - (B) if the Asset Manager has issued the Asset Manager Change Notice, amend the Asset Manager Change Notice to have regard to the outcome of the tender process (including the tender costs) and re-issue the Asset Manager Change Notice to the Principal.

1.4 **Election by the Principal**

Within the Validity Period, the Principal must do one of the following:

- (a) notify the Asset Manager that the Principal:
 - (i) requires further information and/or clarification with respect to the Asset Manager Change Notice; and/or
 - (ii) has altered the scope of the Change Proposal;
- (b) accept the Asset Manager Change Notice in whole or in part by issuing to the Asset Manager a Change Order directing the Asset Manager to implement the Change, which must:
 - (i) if the Asset Manager Change Notice contains any options, nominate which option or options the Principal accepts; and/or
 - (ii) if the Principal accepts part of the Asset Manager Change Notice, identify which part the Principal accepts and which part the Principal rejects;
- (c) reject the whole of the Asset Manager Change Notice; or
- (d) except in the case of a Change contemplated in clauses 7.4 (Planning Approval Change Event), 11.10(h) (Principal access for works or upgrades), 24.2 (Qualifying Change in Law), 24.5 (Change in NSW Government Policy) or 38.1 (Notice of Change), withdraw the proposed Change.

1.5 **Further information or altered scope**

If the Principal issues a notice in accordance with section 1.4(a), the Asset Manager must provide the Principal with an updated Asset Manager Change Notice addressing the issues raised by the Principal within 10 Business Days after receipt of the Principal's notice.

1.6 **Acceptance of the Asset Manager Change Notice**

If the Principal accepts the Asset Manager Change Notice in whole or in part in accordance with section 1.4(b):

- (a) the Asset Manager must proceed to implement (or procure the implementation of) the Change on the basis of the Asset Manager Change Notice (to the extent accepted by the Principal); and
- (b) the Asset Manager's obligations under this deed will be varied to the extent specified in the Asset Manager Change Notice (as accepted by the Principal).

1.7 **Rejection of the Asset Manager Change Notice**

- (a) If the Principal rejects the Asset Manager Change Notice in accordance with section 1.4(c) or rejects part of the Asset Manager Change Notice in accordance with section 1.4(b), the Principal may require that:
 - (i) within a period of 5 Business Days after the date of the Principal's notice under section 1.4(b) or section 1.4(c), the parties commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Asset Manager Change Notice which are in dispute; and/or

- (ii) if the Principal considers that the Asset Manager Change Notice does not accurately set out the Asset Manager's entitlements in accordance with the requirements of this deed or comply with the requirements of the Change Proposal, the Asset Manager amend and resubmit the Asset Manager Change Notice within 10 Business Days after receipt of the Principal's notice; and/or
 - (iii) the Asset Manager conduct a tender process (if it has not already done so) in accordance with section 1.3(b).
- (b) If the parties reach agreement on the disputed matters in the Asset Manager Change Notice, the Principal may accept the Asset Manager Change Notice (as varied by the parties' agreement) by issuing to the Asset Manager a Change Order directing the Asset Manager to implement the Change.

If the Principal issues a Change Order:

- (i) the Asset Manager must proceed to implement (or procure the implementation of) the Change on the basis of the Asset Manager Change Notice (as varied by the parties' agreement, as recorded in the Change Order, on the matters in the Asset Manager Change Notice which were in dispute); and
 - (ii) the Asset Manager's obligations under this deed will be varied to the extent specified in the Asset Manager Change Notice (as varied by the parties' agreement, as recorded in the Change Order, on the matters in the Asset Manager Change Notice which were in dispute).
- (c) If the parties are unable to reach agreement under section 1.7(a) within 10 Business Days after the later of:
- (i) the commencement of the consultation; or
 - (ii) the outcome of the tender process is advised to the Principal (if applicable),
- the Principal may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure. In resolving the dispute under the Dispute Resolution Procedure, the parties will, and will direct the expert or arbitrator to:
- (iii) have regard to the principles set out in section 1.3, to the extent relevant;
 - (iv) assume that funding for the Change will be provided by the Principal, unless the parties otherwise agree; and
 - (v) determine all matters required to enable the Change to be implemented.
- (d) If the Principal refers the matter for dispute resolution, the Principal may also direct the Asset Manager to proceed to implement (or procure the implementation of) the Change by issuing a Change Order to the Asset Manager whether or not the matters in dispute have been agreed or determined in accordance with the Dispute Resolution Procedure. If the Principal gives such a notice:
- (i) the disputed matters will, until the Principal and the Asset Manager otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by the Principal. In making its determination, the Principal will:
 - (A) have regard to the principles set out in section 1.3, to the extent relevant;

- (B) assume that funding for the Change will be provided by the Principal, unless the parties otherwise agree; and
- (C) determine all disputed matters required to enable the Change to be implemented, including the changes required to any AM Documents;
- (ii) the Asset Manager must proceed to implement (or procure the implementation of) the Change on the basis determined by the Principal, notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
- (iii) any necessary adjustments will be made following the resolution of the matters in dispute.
- (e) Following resolution of the dispute referred for dispute resolution under section 1.7(c), the Principal must (unless it has already exercised its right under section 1.7(d)) elect to do either of the following:
 - (i) accept the Asset Manager Change Notice (as varied by the resolution), by issuing to the Asset Manager a Change Order directing the Asset Manager to implement the Change; or
 - (ii) except in the case of a Change contemplated in clauses 7.4 (Planning Approval Change Event), 11.10(h) (Principal access for works or upgrades), 24.2 (Qualifying Change in Law), 24.5 (Change in NSW Government Policy) or 38.1 (Notice of Change), withdraw the proposed Change.
- (f) If the Principal gives the Asset Manager a Change Order pursuant to section 1.7(e):
 - (i) the Asset Manager must proceed to implement (or procure the implementation of) the Change in accordance with the Asset Manager Change Notice (as varied by the resolution); and
 - (ii) the Asset Manager's obligations under this deed will be varied to the extent specified in the Asset Manager Change Notice (as varied by the resolution).

1.8 **Withdrawal of the proposed Change**

If the Principal withdraws the Change Proposal in accordance with section 1.4(d) or section 1.7(e)(ii), the Asset Manager is not obliged or permitted to carry out the Change the subject of the Change Proposal.

1.9 **The Principal may instruct the Asset Manager to proceed**

- (a) Whether or not:
 - (i) the Principal has issued a Change Proposal under section 1.1(a); or
 - (ii) the Asset Manager has issued an Asset Manager Change Notice in response to a Change Proposal under section 1.2,

the Principal may at any time (subject to section 1.1(b)) instruct the Asset Manager to implement a Change by issuing a Change Order. In these circumstances the matters set out in sections 1.2(a) and 1.2(c) will, until the Principal and the Asset Manager otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by the Principal.

- (b) In making its determination, the Principal will:
 - (i) have regard to the principles set out in section 1.3, to the extent relevant;
 - (ii) assume that funding for the Change will be provided by the Principal, unless the parties otherwise agree; and
 - (iii) determine all matters required to enable the Change to be implemented, within 10 Business Days of issue of the relevant Change Order referred to in section 1.9(a).
- (c) If the Asset Manager disagrees with a matter determined by the Principal under this section 1.9:
 - (i) the Asset Manager may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure;
 - (ii) the Asset Manager must proceed to implement (or procure the implementation of) the Change on the basis determined by the Principal notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
 - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

2. **CHANGES PROPOSED BY THE ASSET MANAGER**

2.1 **No Change without consent**

The Asset Manager must not, and must procure that its Related Parties do not, undertake any Change without the Principal's prior consent.

2.2 **Asset Manager proposal**

- (a) The Asset Manager may propose a Change to the Principal by giving the Principal a written notice with details of:
 - (i) the proposed Change;
 - (ii) the reason for the proposed Change;
 - (iii) the Asset Manager's estimate of the Change Costs it will incur, or the Change Savings it will derive, by carrying out the proposed Change, which must be:
 - (A) substantiated (to the full extent possible) with a detailed breakdown;
 - (B) based on:
 - (aa) the rates set out in the WHT LCC Model (to the extent applicable);
 - (bb) if the rates referred to in section 2.2(a)(iii)(B)(aa) are not applicable, the rates set out in the schedule of rates contained in table D.10 of Schedule 24 (Payment Mechanism);
 - (cc) if the rates referred to in section 2.2(a)(iii)(B)(bb) are not applicable, the rates agreed between the Principal and the Asset Manager; and

- (dd) failing agreement under section 2.2(a)(iii)(B)(cc) within 10 Business Days (or such longer period as agreed between the parties), as reasonably determined by the Principal's Representative and notified to the Asset Manager;
 - (iv) the effect of the proposed Change on the AM Services, including:
 - (A) the work that will be affected and how and to what extent it will be affected;
 - (B) any changes required to the scope and/or timing of any Major Repair and Replacement Activities, which must be supported by an updated draft of the relevant Forecast Major Repair and Replacement Plan;
 - (C) any change to the AM Services Documents which will be required as a result of the proposed Change; and
 - (D) any changes to the timing or amount of any Asset Renewal Reserve Amounts to be deposited by the Principal;
 - (v) the time within which the proposed Change will be implemented and the manner in which the Asset Manager proposes to implement (or procure the implementation of) the Change;
 - (vi) the effect (if any) the Asset Manager anticipates the Change will have on:
 - (A) the functionality or integrity of the elements of the Motorway (including specific details of the elements of the Motorway that will be affected and how and to what extent the functionality or integrity of those elements will be affected); and
 - (B) the quality or performance standards required by this deed (including specific details of the quality or performance standards affected and how and to what extent they will be affected); and
 - (vii) any adverse effect which the Change will have on the ability of the Asset Manager to satisfy its obligations under this deed (including any warranties the Asset Manager is required to give under this deed).
- (b) If the Asset Manager proposes a Change under this section 2.2, the Asset Manager will, if required by the Principal, give to the Principal:
 - (i) a written statement from the Asset Manager stating that the proposed Change:
 - (A) will not adversely affect the functional integrity of any of the elements of the Motorway and the performance standards required by this deed; and
 - (B) will not adversely affect the quality standards, warranties and other obligations required under this deed;
 - (ii) a written statement confirming that the Asset Manager has appropriate financial and technical resources to undertake the proposed Change; and
 - (iii) any other information and supporting documentation the Principal's Representative reasonably requires.

2.3 The Principal may approve or reject

- (a) Subject to section 2.3(b), the Principal:
 - (i) (in its absolute discretion) may, by notice in writing, approve (with or without conditions) or reject any Change the Asset Manager proposes; and
 - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the Asset Manager.
- (b) Prior to giving any notice under section 2.3(c), the Principal's Representative may seek to negotiate with the Asset Manager over the amount of the Change Costs or Change Savings, or changes to the Asset Renewal Reserve Amounts, arising from the proposed Change. If the parties agree the amount of the Change Costs or Change Savings, or any changes to the Asset Renewal Reserve Amounts, arising from the proposed Change, the Asset Manager's notice will be deemed to be amended by the inclusion of this different amount of Change Costs or Change Savings in place of the original Change Costs or Change Savings notified by the Asset Manager (together with any change in the Asset Renewal Reserve Amounts).
- (c) If the Principal approves a Change proposed by the Asset Manager:
 - (i) the Principal will issue a written notice entitled "Change Order";
 - (ii) the Asset Manager must thereafter implement (or procure the implementation of) the Change on the basis approved by the Principal; and
 - (iii) the Asset Manager's obligations under this deed will be varied to the extent specified in the Asset Manager's notice issued under section 2.2(a) and approved by the Principal.

2.4 **Asset Manager's risk**

Unless otherwise agreed in writing by the Principal, the Asset Manager will:

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

3. **CHANGES TO THE MOTORWAY**

If the Asset Manager implements a Change under this Schedule 3 (Change Procedure) after the Date of WHT Opening Completion, the Asset Manager must, if requested by the Principal in the relevant Change Order, provide the Principal with a certificate from an independent certifier satisfactory to the Principal (acting reasonably) certifying that the Change has been carried out in accordance with the Change Order and this deed, which:

- (a) in the case of a Change proposed by the Principal, will be at the Principal's cost; or

- (b) in the case of a Change proposed by the Asset Manager, will be at the Asset Manager's cost.

4. **ADDITIONAL SERVICES**

- (a) The Principal may (at its absolute discretion) at any time during the Term request the Asset Manager to provide a proposal to perform (or procure the performance of) any Additional Services as part of the AM Services. Without limiting the definition of Additional Services or any other provision of this deed, the following may be Additional Services:
 - (i) performing maintenance or refurbishment works to the DT Motorway;
 - (ii) assisting any contractor that the Principal engages to provide tolling services for any of the Motorways;
 - (iii) requesting that the Asset Manager rectify a Defect in a Limited Liability Asset that is not an Other Defect (noting that the Asset Manager will not have any obligation to do so); and
 - (iv) providing incident response services.
- (b) The Principal's request under section 4(a) of this Schedule 3 (Change Procedure) may specify the basis (or bases) on which the Principal requires the Asset Manager to price the proposed Additional Services, which may include:
 - (i) a single lump sum payment, or a series of lump sum payments;
 - (ii) payment of the Actual Costs of performing the Additional Services, plus the Additional Services Margin, subject to an upper limiting fee applicable to the proposed Additional Services;
 - (iii) separate pricing for separate parts or components of the proposed Additional Services.
- (c) Except where instructed otherwise by the Principal, any Additional Services must be performed in accordance with the standards, obligations, conditions and requirements of this deed.
- (d) Following receipt of a request from the Principal, the Asset Manager must give the Principal a reasonably detailed proposal, including scope, timetable, methods and proposed price (priced on the basis required by the Principal as notified under section 4(b) of this Schedule 3 (Change Procedure) and in accordance with section C.2 of Schedule 24 (Payment Mechanism)) for:
 - (i) the provision of any Additional Services by the Asset Manager but not for any Asset Manager's Personnel that can provide Additional Services within the time requested by the Principal without any overtime or other excess payments being required; or
 - (ii) the provision of any Additional Services by the Asset Manager procuring the performance of a subcontractor;
- (e) If the parties agree on the scope, timetable, method and proposed price for the performance of any Additional Services by the Asset Manager (or its existing subcontractors), then:

- (i) the Principal and the Asset Manager must record that agreement in writing, including by setting out the agreed price for the performance of the Additional Services (**Agreed Price**) which price must:
 - (A) unless the Principal and the Asset Manager agree otherwise, include an amount on account of the Additional Services Margin other than for spare parts replenishment where no Additional Services Margin is to apply;
 - (B) not include the cost of any activities, resources or other things which are Core Services; and
 - (C) to the extent that the Additional Services are being performed by the Asset Manager as contemplated by sections 4(b)(i) or 4(b)(iii) above, not include any amounts for Asset Manager's Personnel that can provide the Additional Services within the time requested by the Principal without any overtime or other excess payments being required;
 - (ii) the Asset Manager must perform the Additional Services in accordance with the terms of the parties' agreement, this deed and in accordance with Maintenance Best Practices; and
 - (iii) the Principal must pay the Asset Manager the Additional Services Payment determined in accordance with Schedule 24 (Payment Mechanism).
- (f) If the parties agree that the Asset Manager will procure a subcontractor to undertake any Additional Services, the Asset Manager must:
- (i) consult with the Principal (and act in accordance with the Principal's directions) in respect of tendering, choice and terms of appointment of such subcontractors; and
 - (ii) where reasonably possible in the market, obtain a minimum of three quotes for Additional Services which exceed [REDACTED].
- (g) In respect of the Additional Services, the Asset Manager must to the extent possible, perform any Additional Services:
- (i) firstly, using the Asset Manager's Personnel having regard to the experience and expertise of the Asset Manager's Personnel and any relevant industrial awards and agreements that the Asset Manager may have with the Asset Manager's Personnel; and
 - (ii) secondly, to the extent the Asset Manager's Personnel are unable to perform those Additional Services, use external advisors, consultants, subcontractors and suppliers appointed by the Asset Manager on reasonable terms, which are approved by the Principal.
- (h) Whether or not:
- (i) the Principal has issued a request to the Asset Manager under section 4(a); or
 - (ii) the Asset Manager has issued a proposal under section 4(d),
- the Principal may at any time instruct the Asset Manager to carry out Additional Services by issuing a notice titled "Additional Services Order". In these circumstances:

- (iii) the matters set out in section 4(d) will, until the Principal and the Asset Manager otherwise agree or a determination is made in accordance with the Dispute Resolution Procedure, be reasonably determined by the Principal; and
 - (iv) the Asset Manager must carry out (or procure the carrying out of) the Additional Services on the basis instructed or determined by the Principal.
- (i) In making its determination, the Principal will:
- (i) have regard to the rates and prices in Schedule 24 (Payment Mechanism) (to the extent applicable) or otherwise reasonable industry rates and prices;
 - (ii) assume that funding for the Additional Services will be provided by the Principal, unless the parties otherwise agree; and
 - (iii) determine all matters required to enable the Additional Services to be carried out.
- (j) If the Asset Manager disagrees with a matter instructed or determined by the Principal under section 4(h):
- (i) the Asset Manager may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure;
 - (ii) the Asset Manager must proceed to carry out (or procure the carrying out of) the Additional Services on the basis determined by the Principal notwithstanding that the matters in dispute have not been agreed or determined in accordance with the Dispute Resolution Procedure; and
 - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

5. **PARAMETERISED CHANGES**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[Redacted]

[Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

SCHEDULE 4

Not Used

SCHEDULE 5

Key Personnel

(Clause 9.20)

1A. Role descriptions

Within 20 Business Days after the Commencement Date, the Asset Manager must provide, and the parties must subsequently agree, role descriptions for each of the personnel described in section 1 and section 2 of this Schedule 5 (Key Personnel).

1. Asset Manager's Key Personnel

Name	Position	Role Description
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).

Name	Position	Role Description
[Redacted]		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).

2. **Subcontractor's Key Personnel**

Name	Position	Role Description
[Redacted]		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).
		As agreed under section 1A of this Schedule 5 (Key Personnel).

Name	Position	Role Description
		As agreed under section 1A of this Schedule 5 (Key Personnel).

Note (1) - These roles are Key Personnel only with respect to the WHT Procurement Phase and the WHT Delivery Phase.

Note (2) - This 'Assistant Project Manager' role is a Key Personnel only with respect to the first 21 months from the Commencement Date.

SCHEDULE 6

Significant Subcontracts

(Clause 9.2)

Significant Subcontracts include:

- (a) any Subcontract for the works and services described below:
 - (i) OMCS (CCCS) Technical Support;
 - (ii) Air Quality Monitoring; and
 - (iii) Fire and life safety Systems Services / Technical Support; and
- (b) the Subcontract between the Asset Manager and [REDACTED]
[REDACTED]

SCHEDULE 7

Significant Subcontractor Side Deed

(Clause 9.2)

THIS DEED POLL is made the day of 20

To: Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (**Principal**).

By: *[Insert]* (ABN *[Insert]*) of *[Insert]* (**Subcontractor**).

RECITALS:

- A. The Principal has entered into a contract with *[Insert]* (**Asset Manager**) for the provision of asset management, operations and maintenance services for the Western Harbour Tunnel and Sydney Harbour Tunnel (**AM Services**).
- B. The Subcontractor has an agreement (**Subcontract**) with the Asset Manager for the provision of *[Insert description of services]* (**Subcontract Services**) as part of the AM Services.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll in favour of the Principal.

OPERATIVE

1. The Subcontractor will comply with its obligations under the Subcontract and the Subcontract Services will satisfy the requirements of the Subcontract.
2. The Principal may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
 - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be limited as set out in the Subcontract and reduced to the extent to which the Subcontractor has already paid money to or performed work for the Asset Manager in respect of that breach.

EXECUTED as a deed poll

Executed by **[insert name of Subcontractor]** (ABN **[insert ABN]**) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

ATTACHMENT 1 TO FORM OF SUBCONTRACTOR DEED

Deed of Novation

DATE: *[insert date]*

BETWEEN:

1. *[Insert name and ABN]* of *[Insert]* (**Substitute Asset Manager**);
2. *[Insert name and ABN]* of *[Insert]* (**Original Asset Manager**); and
3. *[Insert name and ABN]* of *[Insert]* (**Subcontractor**).

RECITALS:

- (A) By a contract dated *[Insert]* between:
- (1) Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (**Principal**); and
 - (2) Asset Manager,
- (**Contract**) the Principal engaged the Original Asset Manager to undertake the AM Services (as defined in the Contract).
- (B) The Original Asset Manager has entered into an agreement (**Subcontract**) with the Subcontractor for the provision of *[Insert]* (**Subcontract Services**) as part of the AM Services.
- (C) The Principal has terminated the Contract and has engaged the Substitute Asset Manager to complete the AM Services.
- (D) The Principal and the Substitute Asset Manager wish to effect a novation of the Subcontract.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Substitute Asset Manager must perform all of the obligations of the Original Asset Manager under the Subcontract which are not performed at the date of this deed. The Substitute Asset Manager is bound by the Subcontract as if it had originally been named in the Subcontract in place of the Original Asset Manager.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Substitute Asset Manager was originally named in the Subcontract in place of the Original Asset Manager.
3. Subject to clause 4, the Subcontractor releases the Original Asset Manager from:
 - (a) its obligations and liabilities under or in respect of the Subcontract; and
 - (b) all claims, actions, demands, proceedings and liability that the Subcontractor may have or claim to have, or but for this release might have had against the Original Asset Manager in connection with the Subcontract,

arising on or after the date of this deed (**Effective Date**), but excluding any obligations or liabilities arising on or after the Effective Date relating to events occurring prior to the Effective Date.

4. The Subcontractor does not release the Original Asset Manager from:
 - (a) any of its obligations or liabilities under or in respect of the Subcontract; or
 - (b) any claims, actions, demands, proceedings or liability that the Subcontractor may have or claim to have, or but for this release might have had, against the Original Asset Manager in connection with the Subcontract,
accruing or arising before the Effective Date.
5. The Original Asset Manager remains liable to the Subcontractor for all its obligations and liabilities under the Subcontract accruing or arising before the Effective Date, or which arise on or after the Effective Date relating to events occurring prior to the Effective Date.
6. The Subcontractor releases the Original Asset Manager from any obligations or liability arising under or in respect of the Subcontract on or after the Effective Date.
7. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

Executed by *[Insert]* **ABN** *[Insert]* by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by *[Insert]* **ABN** *[Insert]* by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by *[Insert]* **ABN** *[Insert]* by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

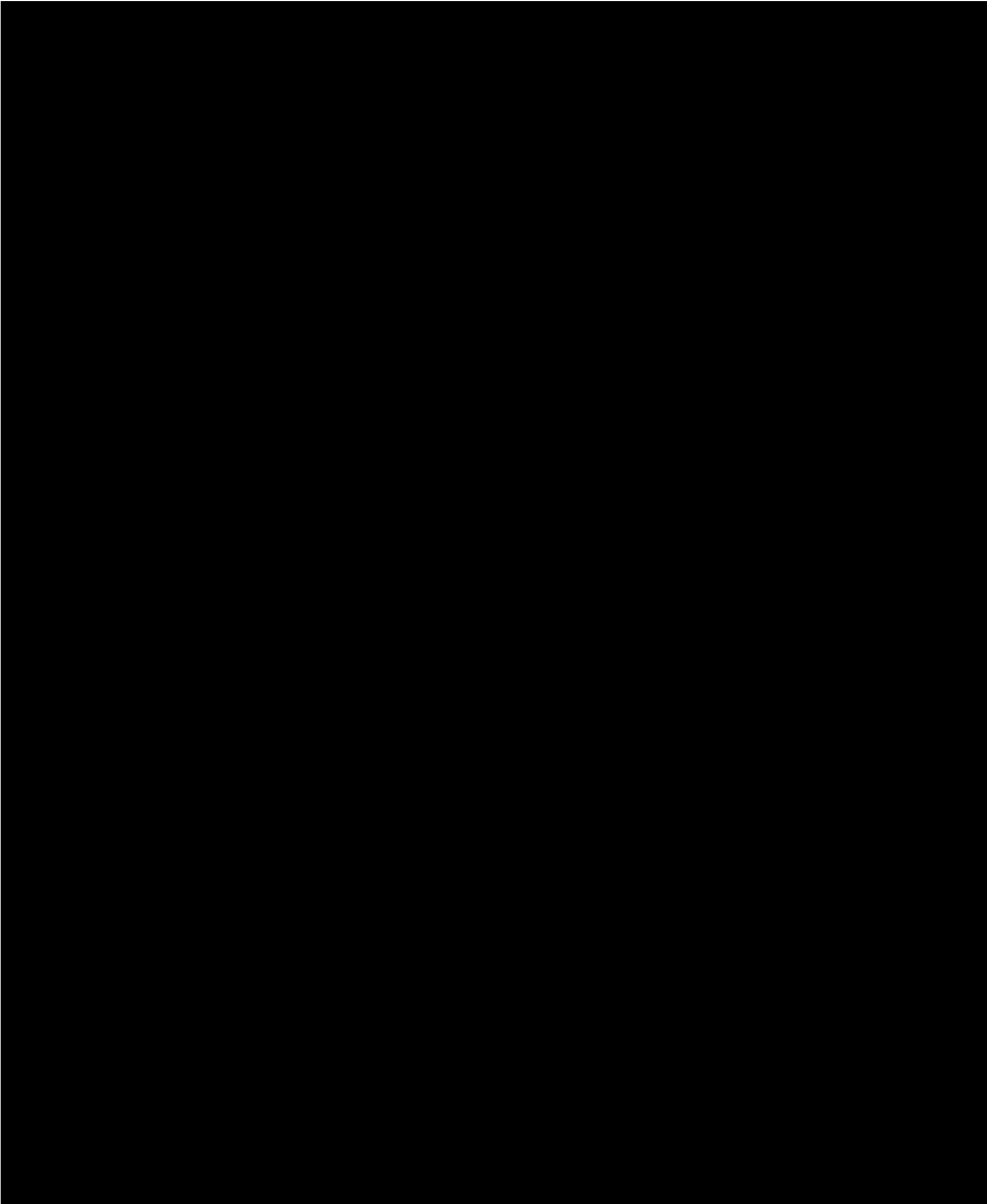
Name of Secretary/other Director in full

SCHEDULE 8

Main Works Interface Deed

SCHEDULE 8

Main Works Interface Deed



SCHEDULE 9

Form of Deed of Novation

(Clause 36.1(d))

This Deed is made on

20[]

Parties

- 1 [Insert name of Novatee] [insert ABN/ACN] of [insert address] (the **Novatee**).
- 2 Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (the **Principal**).
- 3 [insert name] [insert ABN/ACN] of [insert address] (the **Asset Manager**).
- 4 [insert name] [insert ABN/ACN] whose registered office is at [insert address] (the **AM Guarantor**).

Recitals

- (A) The Asset Manager and the Principal are parties to a deed for the asset management, operations and maintenance of the Motorways dated [insert] (the **AM Deed**).
- (B) The Principal and the AM Guarantor are party to a deed of guarantee dated [insert] (the **AM Guarantee**).
- (C) The Principal wishes to exercise its right to novate its interests, rights and obligations under the AM Deed, pursuant to clause 36.1 (Entitlement to assign) of the AM Deed.
- (D) In connection with the novation of the AM Deed, the Principal wishes to exercise its rights to novate its interests, rights and obligations under the AM Guarantee, pursuant to clause 10(c) of the AM Guarantee.
- (E) The parties to this Deed have agreed to novate the AM Deed and the AM Guarantee on the terms of this Deed.

1. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except

to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules, and annexures to that agreement or document.

- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Except as otherwise defined in this Deed, terms used in this Deed that are defined in the AM Deed have the same meanings in this Deed.
- (j) The word "include" in any form is not a word of limitation.

2. Novation of AM Deed

2.1 Novation

The parties agree to novate the AM Deed, such that on and from the date of execution of this Deed (the **Effective Date**):

- (a) the Novatee is substituted for the Principal under the AM Deed as if the Novatee had originally been a party to the AM Deed instead of the Principal; and
- (b) each reference in the AM Deed to the Principal is to be read as if it were a reference to the Novatee.

2.2 Assumption of rights and obligations

On and from the Effective Date:

- (a) the Novatee:
 - (i) will be bound by, and must comply with, the AM Deed as it relates to the Principal;
 - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the AM Deed (whether arising before or after the Effective Date); and
 - (iii) will assume all the obligations and liabilities of the Principal under or in respect of the AM Deed arising or accruing on or after the Effective Date (but will not assume any obligation or liability of the Principal under or in respect of the AM Deed arising or accruing before the Effective Date); and
- (b) the Asset Manager will comply with the AM Deed on the basis that the Novatee has replaced the Principal under it in accordance with the terms of this Deed.

3. Release

3.1 Release by Asset Manager

The Asset Manager releases the Principal from:

- (a) its obligations and liabilities under or in respect of the AM Deed; and

- (b) all claims, actions, demands, proceedings and liability that the Asset Manager may have or claim to have, or but for this release might have had, against the Principal in connection with the AM Deed,

arising on or after the Effective Date.

3.2 No release by Asset Manager

- (a) The Asset Manager does not release the Principal from:
 - (i) any of its obligations or liabilities under or in respect of the AM Deed; or
 - (ii) any claims, actions, demands, proceedings or liability that the Asset Manager may have or claim to have, or but for this release might have had, against the Principal in connection with the AM Deed,accruing or arising before the Effective Date.
- (b) The Principal remains liable to the Asset Manager for all its obligations and liabilities under the AM Deed accruing or arising before the Effective Date.
- (c) The Asset Manager releases the Principal from any obligations or liability arising under or in respect of the AM Deed on or after the Effective Date.

4. Indemnity

4.1 Indemnity by the Principal

The Principal indemnifies the Novatee against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Novatee by the Asset Manager or any other person in connection with any matter relating to, or any act or omission of the Principal with respect to, the AM Deed before the Effective Date.

4.2 Indemnity by Novatee

The Novatee indemnifies the Principal against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Principal by the Asset Manager or any other person in connection with any matter relating to, or any act or omission of the Novatee with respect to, the AM Deed on or after the Effective Date.

5. Novation of AM Guarantee

On and from the Effective Date:

- (a) the Novatee:
 - (i) is substituted for the Principal under the AM Guarantee as if the Novatee had originally been a beneficiary under the AM Guarantee instead of the Principal; and
 - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the AM Guarantee (whether arising before or after the Effective Date); and
- (b) the AM Guarantor:

- (i) will be bound by, and must comply with, the AM Guarantee as it relates to the Novatee;
 - (ii) will continue to bear, for the benefit of the Novatee, all its obligations and liabilities under or in respect of the AM Guarantee arising or accruing on or after the Effective Date; and
 - (iii) will continue to bear, for the benefit of the Principal, any obligation or liability of the AM Guarantor under or in respect of the AM Guarantee arising or accruing before the Effective Date.
- (c) Each reference in the AM Guarantee to the Principal is to be read as if it were a reference to the Novatee.

6. Insurance and Unconditional Undertakings

The Asset Manager will:

- (a) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the policies of insurance that are required to be taken out pursuant to clause 25.5 (AM Insurances) of the AM Deed;
- (b) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under those policies of insurance, take out replacement policies of insurance with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clause 25.5 (AM Insurances) of the AM Deed in all respects;
- (c) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the Unconditional Undertakings that must be provided pursuant to clause 10.2 (Security Bond Requirements) of the AM Deed; and
- (d) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under those Unconditional Undertakings, provide replacement Unconditional Undertakings with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clause 10.2 (Security Bond Requirements) of the AM Deed in all respects.

7. Notices under the AM Deed

For the purposes of all provisions in the AM Deed regarding service of notices, the address for the Novatee is the address set out at the start of this Deed.

8. Representations and Warranties

- (a) Each party represents and warrants to each other party that:
 - (i) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
 - (iii) this Deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.

- (b) Each of the Asset Manager and the Principal represents and warrants to the Novatee that, as at the Effective Date, neither the Asset Manager nor the Principal is in default under any provision of the AM Deed.

9. Delivery of Documents

The Principal will deliver to the Novatee on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the AM Deed.

10. Further Assurances

At the reasonable request of another party, each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

11. Assignment

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party, which may not be unreasonably withheld.

12. Amendment

This Deed may be amended only by another deed executed by all the parties.

13. Costs and Duty

The Principal must bear the costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Novatee.

14. Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

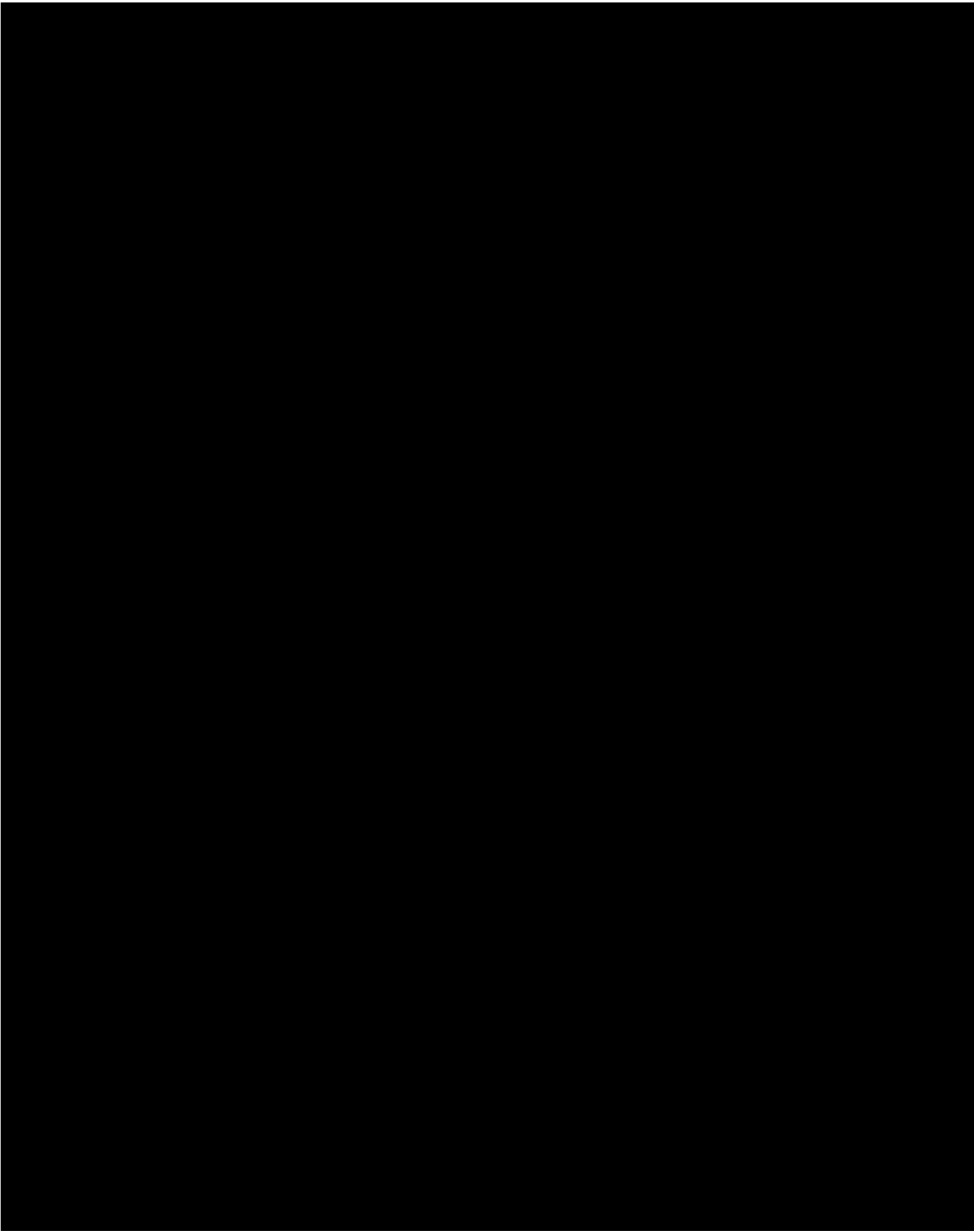
15. Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed and delivered as a Deed.

[Note: Appropriate Execution blocks to be inserted.]

SCHEDULE 10



SCHEDULE 11

Moral Rights Consent

(Clause 28.6)

MORAL RIGHTS CONSENT

THIS DEED POLL is made on the _____ day of _____.

BY: [Name of individual] of [address], [occupation] (**Author**)

IN FAVOUR OF:

Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (the **Principal**); and any person nominated by the Principal under clause 2 of this deed poll, (together, the **Beneficiaries**).

WHEREAS:

- (A) The Principal has engaged [insert] (ABN [insert]) (**Asset Manager**) under the deed dated [insert] (**AM Deed**) to carry out the AM Services (as defined in the AM Deed).
- (B) The Author may create or have created one or more literary works, artistic works or other copyright material (whether created before or after the date of this Moral Rights Consent) for the purposes of or otherwise for use in connection with the Project (**Copyright Material**).

THE AUTHOR COVENANTS as follows:

1. The Author, in consideration of the Asset Manager (on behalf of the Beneficiaries) paying the Author [REDACTED] (receipt of which is hereby acknowledged):
 - (a) agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's "moral rights" under the *Copyright Act 1968* (Cth) (as amended), (whether before or after the date of this Moral Rights Consent) by:
 - (i) any or all of the Beneficiaries;
 - (ii) any contractor which any or all of the Beneficiaries engage;
 - (iii) any third party to whom any or all of the Beneficiaries sub-licenses (whether express or implied), or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or
 - (iv) any third party to whom any or all of the Beneficiaries assigns rights it has in, or in relation to, any of the Copyright Material,(together, the **Beneficiaries and Associated Persons**) in relation to any of the Copyright Material;

- (b) without limiting section 1(a) above, consents to any of the Beneficiaries and Associated Persons:
 - (i) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;
 - (ii) falsely attributing authorship of any of the Copyright Material;
 - (iii) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:
 - (A) results in a material distortion, destruction or mutilation of any of the Copyright Material; or
 - (B) is prejudicial to the honour or reputation of the Author; and
- (c) without limiting sections 1(a) or 1(b), consents to any of the Beneficiaries and Associated Persons:
 - (i) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;
 - (ii) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and
 - (iii) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

2. In respect of the Beneficiaries:

- (a) the Principal may at any time give notice to the Author that another entity is to become an additional Beneficiary under this Deed. The Principal may give multiple notices under this clause. The Author agrees that on and from the date of the Principal's notice, the entity identified by the Principal will be a Beneficiary under this Deed;
- (b) if for any reason a Beneficiary is unable to enforce against the Author its promises under this Deed, the Author agrees that the Principal may do so on behalf of any and all Beneficiaries; and
- (c) nothing in this Deed amounts to an obligation on the Beneficiaries to comply, or a warranty by the Beneficiaries that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

EXECUTED as a deed poll.

SIGNED, SEALED and **DELIVERED** by
[NAME OF PARTY] in the presence of:

 Signature of party

 Signature of witness

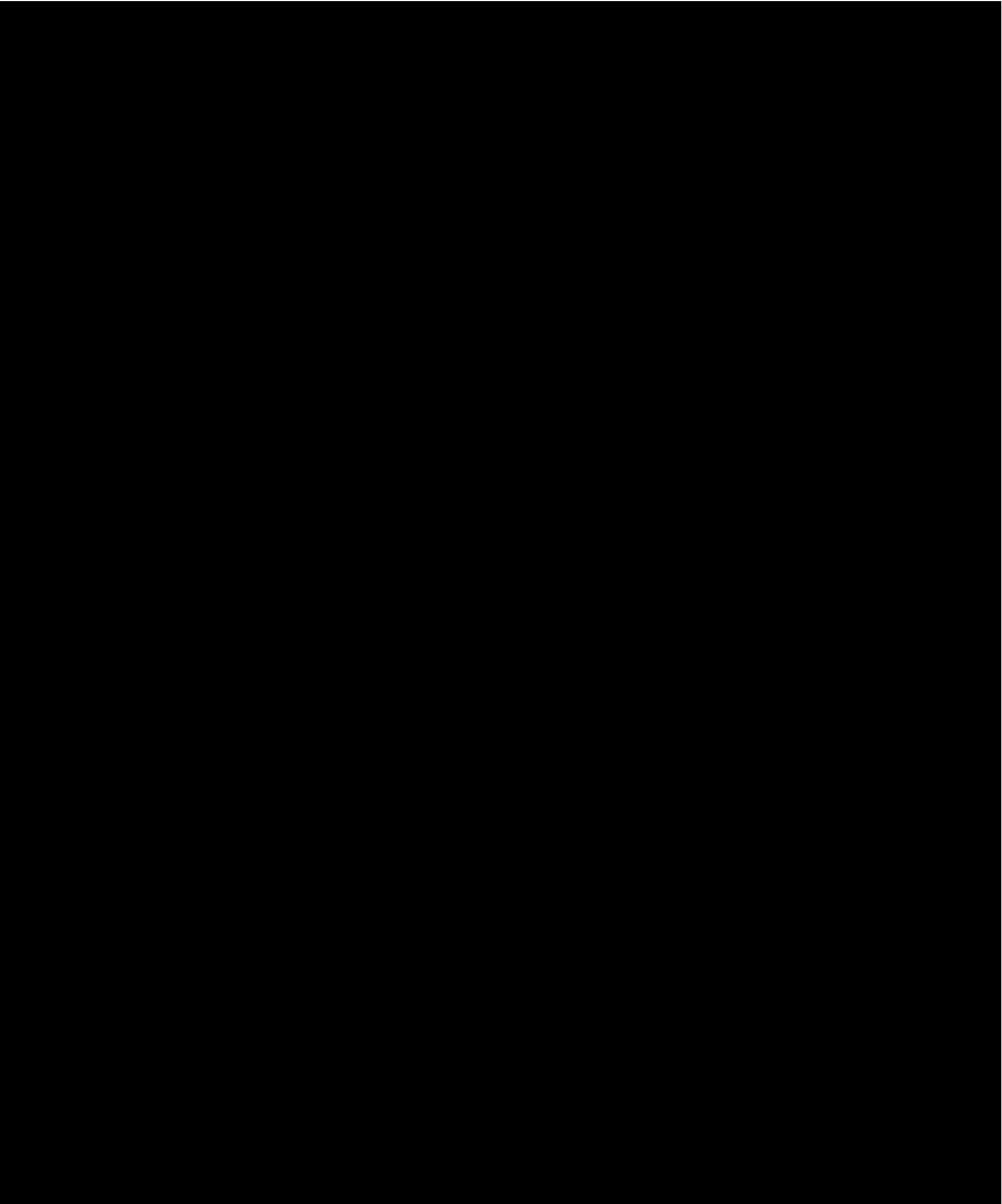
 Name

Name

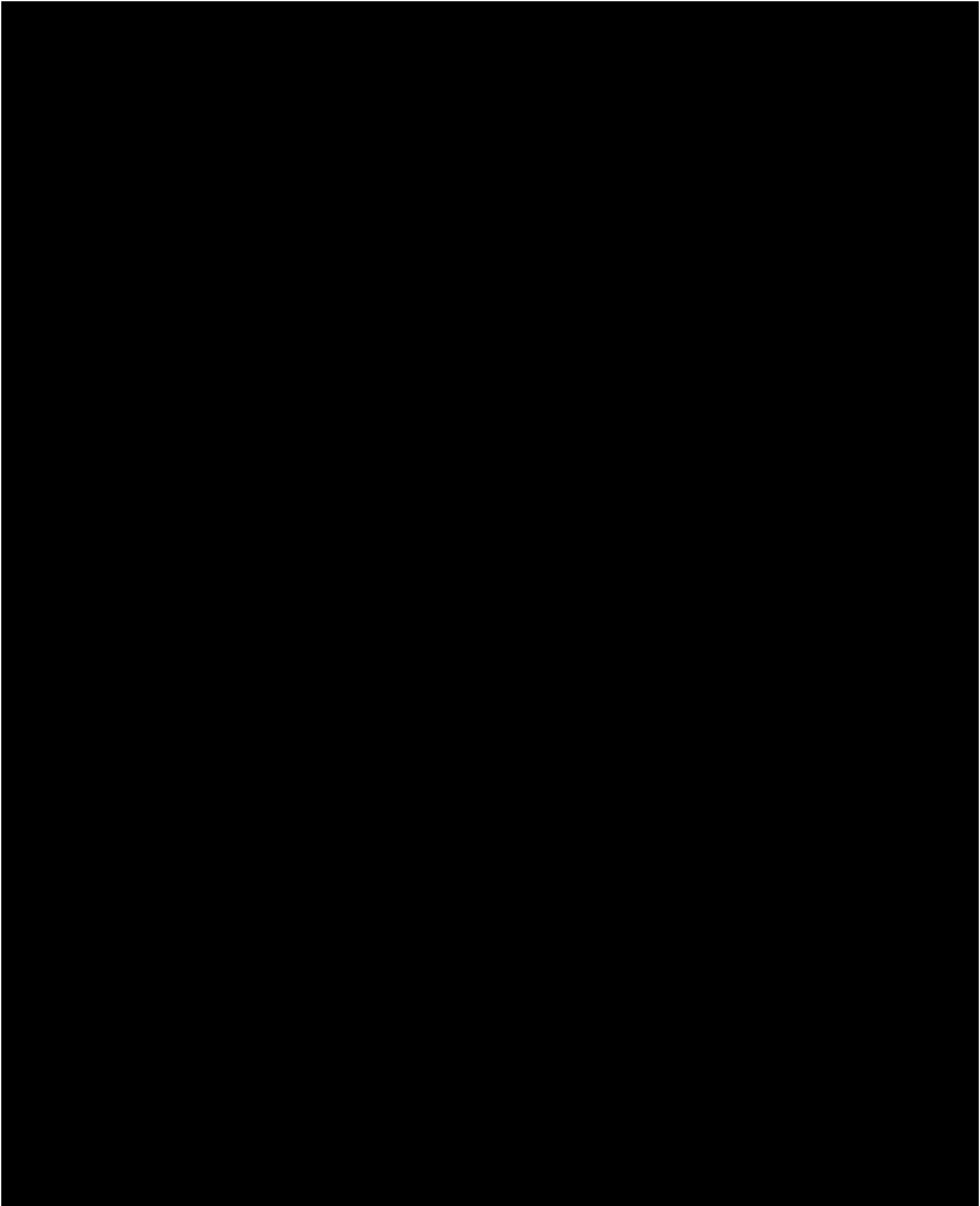
Address of witness

SCHEDULE 12

Commercially Sensitive Information



SCHEDULE 13



SCHEDULE 14

Information Documents

(Clause 11.6)

The documents and information set out in the table below, which were provided through the data room set up in relation to the tender process for the AM Services, are Information Documents for the purposes of paragraph (a) of the definition of 'Information Documents' and are included in Schedule 36 (Electronic Files) as electronic files for reference only.

Document Reference	Document Title	Type
07.03.01	01 Process Documents	Folder
07.03.01.01	01.01 WHT + SHT Asset Manager - Data Room Interaction Rules	Document
07.03.01.02	01.03 WHT + SHT AM - Procurement Process Deed Poll (FINAL) - Sep 2021	Document
07.03.01.03	01.04 WHT + SHT AM - Guidance Note - partnering with consultants	Document
07.03.02	02 Request for Tender	Folder
07.03.02.01	02.02 RFT native files	Folder
07.03.02.01.01	02.02.07 WHT and SHT Asset Manager - RFT - LCC Model	Folder
07.03.02.01.01.01	02.02.07.01 LCC model cover note September	Document
07.03.02.01.01.02	02.02.07.02 CICA-TFN-002-D00X - LCCM AM Te	Document
07.03.02.01.01.03	02.02.07.03 CICA-TFN-002-D00X - LCCM Gener	Document
07.03.02.01.01.04	02.02.07.04 LCCM Generation Tool vRC.0.c.	Document
07.03.02.01.01.05	02.02.07.05 LCCM Reports v00.03	Document
07.03.02.01.01.06	02.02.07.06 NextGen LCCM AM Template vRC.0	Document
07.03.02.01.02	02.02.01 WHT and SHT Asset Manager - RFT - Returnable Schedules - WORD	Document
07.03.02.01.03	02.02.02 WHT and SHT Asset Manager - RFT - Tender Form - Annexure 1.1	Document
07.03.02.01.04	02.02.03 WHT and SHT Asset Manager - RFT - Tender Form - Annexure 1.3 Release Deed Poll	Document
07.03.02.01.05	02.02.04 WHT and SHT Asset Manager - RFT - AM Fee Pricing Schedule_v0.02	Document
07.03.02.01.06	02.02.05 WHT and SHT Asset Manager - RFT - AM Services Specification - WORD	Document

Document Reference	Document Title	Type
07.03.02.01.07	02.02.06 WHT and SHT Asset Manager – RFT – ITP Guide Forms - WORD	Document
07.03.02.02	02.03 Asset Management Deed	Folder
07.03.02.02.01	02.03.01 WHT_SHT - Asset Management Deed - Main Body - (RFT Version)	Document
07.03.02.02.02	02.03.02 WHT_SHT - Asset Management Deed - Schedules (RFT Version)	Document
07.03.02.02.03	02.03.03 WHT_SHT - Asset Management Deed - Schedule 24 (Payment Mechanism)	Document
07.03.02.03	02.01 WHT and SHT Asset Manager – RFT – PDF	Document
07.03.03	03 Addenda	Folder
07.03.03.01	03.03 Addendum 3	Folder
07.03.03.01.01	03.03.01 Addendum 3 - LCC Model	Folder
07.03.03.01.01.01	03.03.01.01 CICA-INT-017-D00X - LCCM Development Services - Release Note - RC.0.	Document
07.03.03.01.01.02	03.03.01.02 CICA-TFN-002-D00X - LCCM AM Template - User Guide.v00.09	Document
07.03.03.01.01.03	03.03.01.03 CICA-TFN-002-D00X - LCCM Generator - User Guide.v00.03	Document
07.03.03.01.01.04	03.03.01.04 CICA-TFN-002-D00X - LCCM Reports - User Guide.v00.02	Document
07.03.03.01.01.05	03.03.01.05 LCCM Generation Tool vRC.0.c.2	Document
07.03.03.01.01.06	03.03.01.06 LCCM Reports v00.03	Document
07.03.03.01.01.07	03.03.01.07 NextGen LCCM AM Template vRC.0.c.3.takeoff_load	Document
07.03.03.01.02	03.03.02 WHT and SHT Asset Manager – RFT – Addendum 3 - 8 October 2021	Document
07.03.03.02	03.04 Addendum 4	Folder
07.03.03.02.01	03.04.02 Addendum 4 - Attachments	Folder
07.03.03.02.01.01	03.04.02.01 1.4 - SHT Indicative Site Diagrams	Folder
07.03.03.02.01.01.01	03.04.02.01.01 Auto Consol 8652-	Document
07.03.03.02.01.01.02	03.04.02.01.02 DP785021 - Land t	Document

Document Reference	Document Title	Type
07.03.03.02.01.01.03	03.04.02.01.03 DP849662 - Land t	Document
07.03.03.02.01.01.04	03.04.02.01.04 DP849663 - Land t	Document
07.03.03.02.01.01.05	03.04.02.01.05 DP849664 - Land t	Document
07.03.03.02.01.01.06	03.04.02.01.06 SHT_Lease_1of5	Document
07.03.03.02.01.01.07	03.04.02.01.07 SHT_Lease_2of5	Document
07.03.03.02.01.01.08	03.04.02.01.08 SHT_Lease_3of5	Document
07.03.03.02.01.01.09	03.04.02.01.09 SHT_Lease_4of5	Document
07.03.03.02.01.01.10	03.04.02.01.10 SHT_Lease_5of5	Document
07.03.03.02.01.02	03.04.02.02 AM Fee Pricing Schedule_v0.03	Document
07.03.03.02.01.03	03.04.02.03 WHT+SHT Asset Manager - Planned Addenda Roadmap	Document
07.03.03.02.01.04	03.04.02.04 WHT_SHT - Asset Management Deed - Schedule 26 - Insurance	Document
07.03.03.02.02	03.04.01 WHT and SHT Asset Manager RFT Addendum 4 - 15 October 2021	Document
07.03.03.03	03.05 Addendum 5	Folder
07.03.03.03.01	03.05.02 Attachments	Folder
07.03.03.03.01.01	03.05.02.08 Updated LCCM Generation Tool	Folder
07.03.03.03.01.01.01	03.05.02.08.01 CICA-INT-017-D00X - LCCM Developmen	Document
07.03.03.03.01.01.02	03.05.02.08.02 LCCM Generation Tool vRC.0.c.4a	Document
07.03.03.03.01.02	03.05.02.01 CICA-INT-017-D00X - LCCM Development Services - Release Note - RC.0.c.4	Document
07.03.03.03.01.03	03.05.02.02 CICA-TFN-002-D00X - LCCM AM Template - User Guide.v00.10	Document
07.03.03.03.01.04	03.05.02.03 CICA-TFN-002-D00X - LCCM Generator - User Guide.v00.03	Document
07.03.03.03.01.05	03.05.02.04 CICA-TFN-002-D00X - LCCM Reports - User Guide.v00.03	Document
07.03.03.03.01.06	03.05.02.05 LCCM Generation Tool vRC.0.c.4	Document
07.03.03.03.01.07	03.05.02.06 LCCM Reports v00.04	Document

Document Reference	Document Title	Type
07.03.03.03.01.08	03.05.02.07 NextGen LCCM AM Template vRC.0.c.4.takeoff_load	Document
07.03.03.03.02	03.05.01 WHT+SHT AM - Addendum 5 - 25 October 2021	Document
07.03.03.04	03.06 Addendum 6	Folder
07.03.03.04.01	03.06.02 Attachments	Folder
07.03.03.04.01.01	[REDACTED]	Document
07.03.03.04.01.02	[REDACTED]	Document
07.03.03.04.01.03	[REDACTED]	Document
07.03.03.04.01.04	[REDACTED]	Document
07.03.03.04.01.05	[REDACTED]	Document
07.03.03.04.01.06	[REDACTED]	Document
07.03.03.04.01.07	[REDACTED]	Document
07.03.03.04.02	03.06.01 WHT+SHT AM - Addendum 6 - 25 October 2021	Document
07.03.03.05	03.07 Addendum 7	Folder
07.03.03.05.01	03.07.02 Attachments	Folder
07.03.03.05.01.01	03.07.02.01 WHT+SHT AM - Addendum 7 - Returnable Schedule 2	Document
07.03.03.05.01.02	03.07.02.02 AM_DC Interface Deed - Addendum 7	Document
07.03.03.05.02	03.07.01 WHT+SHT AM - Addendum 7 - 4 November 2021	Document
07.03.03.06	03.08 Addendum 8	Folder
07.03.03.06.01	03.08.02 Attachments	Folder
07.03.03.06.01.01	03.08.02.01 LCCM Generation Tool vRC.0.c.4b	Document
07.03.03.06.01.02	03.08.02.02 CICA-INT-017-D00X - LCCM Development Services - Release Note - RC.0.c.4b	Document

Document Reference	Document Title	Type
07.03.03.06.02	03.08.01 WHT+SHT AM - Addendum 8 - 11 November 2021	Document
07.03.03.07	03.09 Addendum 9	Folder
07.03.03.07.01	03.09.02 Attachments	Folder
07.03.03.07.01.01	03.09.02.01 Google Maps Capture - Ingress_Egress Structures	Document
07.03.03.07.01.02	03.09.02.02 Google Maps Capture - North Portal Switchroom	Document
07.03.03.07.01.03	03.09.02.03 SHT Maintenance Boundary - Sheet 1 of 8	Document
07.03.03.07.01.04	03.09.02.04 SHT Maintenance Boundary - Sheet 2 of 8	Document
07.03.03.07.01.05	03.09.02.05 SHT Maintenance Boundary - Sheet 3 of 8	Document
07.03.03.07.01.06	03.09.02.06 SHT Maintenance Boundary - Sheet 4 of 8	Document
07.03.03.07.01.07	03.09.02.07 SHT Maintenance Boundary - Sheet 5 of 8	Document
07.03.03.07.01.08	03.09.02.08 SHT Maintenance Boundary - Sheet 6 of 8	Document
07.03.03.07.01.09	03.09.02.09 SHT Maintenance Boundary - Sheet 7 of 8	Document
07.03.03.07.01.10	03.09.02.10 SHT Maintenance Boundary - Sheet 8 of 8	Document
07.03.03.07.01.11	03.09.02.11 WHT+SHT Asset Manager - SHT Licensed Maintenance Area - Indicative Plans Instruc	Document
07.03.03.07.02	03.09.01 WHT+SHT AM - Addendum 9 - 19 November 2021	Document
07.03.03.08	03.10 Addendum 10	Folder
07.03.03.08.01	03.10.02 Attachments	Folder
07.03.03.08.01.01	03.10.02.08 Compares	Folder
07.03.03.08.01.01.01	03.10.02.08.01 COMPARE - WHT_SHT - Asset Management Deed - Schedule 24	Document
07.03.03.08.01.01.02	03.10.02.08.02 COMPARE - WHT SHT Asset Management Deed Main Body (Adde	Document
07.03.03.08.01.01.03	03.10.02.08.03 COMPARE - WHT SHT Asset Management Deed Schedules (Adde	Document
07.03.03.08.01.01.04	03.10.02.08.04 COMPARE - Asset Manager Services Specification_Addendum	Document

Document Reference	Document Title	Type
07.03.03.08.01.02	03.10.02.01 WHT_SHT - Asset Management Deed - Main Body - Addendum 10	Document
07.03.03.08.01.03	03.10.02.02 WHT_SHT - Asset Management Deed - Schedules - Addendum 10	Document
07.03.03.08.01.04	03.10.02.03 WHT_SHT - Asset Management Deed - Schedule 24 (Payment Mechanism) - Addendum 1	Document
07.03.03.08.01.05	03.10.02.04 Asset Manager Services Specification_Addendum 10	Document
07.03.03.08.01.06	03.10.02.05 WHT and SHT Asset Manager – RFT – Tender Form - Annexure 1.3 Release Deed Poll	Document
07.03.03.08.01.07	03.10.02.06 WHT+SHT AM - Addendum 10 - Returnable Schedule 5	Document
07.03.03.08.01.08	03.10.02.07 AM Fee Pricing Schedule_v0.04r	Document
07.03.03.08.02	03.10.01 WHT and SHT Asset Manager- RFT Addendum 10 - 30 November 2021	Document
07.03.03.09	03.11 Addendum 11	Folder
07.03.03.09.01	03.11.02 Attachments	Folder
07.03.03.09.01.01	03.11.02.01 AM_DC Interface Deed - Addendum 11	Document
07.03.03.09.01.02	03.11.02.02 COMPARE - AM_DC Interface Deed - Addendum 11	Document
07.03.03.09.02	03.11.01 WHT and SHT Asset Manager- RFT Addendum 11 - 8 December 2021	Document
07.03.03.10	03.01 WHT and SHT Asset Manager – RFT – Addendum 1 - 24 Sep 2021	Document
07.03.03.11	03.02 WHT and SHT Asset Manager – RFT – Addendum 2 - 1 Oct 2021	Document
07.03.03.12	03.12 WHT and SHT Asset Manager- RFT Addendum 12 - 14 December 2021	Document
07.03.04	04 Notice to Tenderers	Folder
07.03.04.01	04.01 Q&A Statements	Folder
07.03.04.01.01	04.01.01 WHT + SHT Asset Manager - QA Statement 1 20211001	Document
07.03.04.01.02	04.01.02 WHT + SHT Asset Manager - QA Statement 2 20211008	Document

Document Reference	Document Title	Type
07.03.04.01.03	04.01.03 WHT + SHT Asset Manager - QA Statement 3 20211015	Document
07.03.04.01.04	04.01.04 WHT + SHT Asset Manager - QA Statement 4 20211022	Document
07.03.04.01.05	04.01.05 WHT + SHT Asset Manager - QA Statement 5 20211029 v1	Document
07.03.04.01.06	04.01.06 WHT + SHT Asset Manager - QA Statement 6 20211108	Document
07.03.04.01.07	04.01.07 WHT + SHT Asset Manager - QA Statement 7 20211112	Document
07.03.04.01.08	04.01.08 WHT + SHT Asset Manager - QA Statement 8 20211119	Document
07.03.04.01.09	04.01.09 WHT + SHT Asset Manager - QA Statement 9 20211126	Document
07.03.05	05 Information Documents	Folder
07.03.05.01	05.01 Sydney Harbour Tunnel	Folder
07.03.05.01.01	05.01.01 Asset Condition Reports	Folder
07.03.05.01.01.01	05.01.01.01 60639176-RPT-03_2 Asset Condition Assessment Report (SHT)	Document
07.03.05.01.01.02	05.01.01.02 60639176-RPT-05_0 SHT Future Maintenance Schedule Rev1 - Redacted Ve	Document
07.03.05.01.02	05.01.03 Initial Operations Data	Folder
07.03.05.01.02.01	05.01.03.01 SHT Power Costs 2018	Document
07.03.05.01.02.02	05.01.03.02 SHT Power Costs 2019	Document
07.03.05.01.02.03	05.01.03.03 SHT Power Costs 2020	Document
07.03.05.01.02.04	05.01.03.04 SHT Power Data 2021	Document
07.03.05.01.02.05	05.01.03.05 Appendix B - SHTC Asset Replacement and Refurbishment Schedule and M	Document
07.03.05.01.02.06	05.01.03.06 SHT - Scheduled closures 2021	Document
07.03.05.01.02.07	05.01.03.07 SHT M&E Systems - Maintenance, Repair and Upgrade Manual2	Document
07.03.05.01.02.08	05.01.03.08 Trantek Introduction to CCCS	Document

Document Reference	Document Title	Type
07.03.05.01.02.09	05.01.03.09 SHT Sydney Water Consent to Discharge Industrial Trade Wastewater	Document
07.03.05.01.02.10	05.01.03.09.01 SHT Water Consent to Discharge (updated)	Document
07.03.05.01.02.11	05.01.03.10 SHT Water Testing April 2020 to July 2021	Document
07.03.05.01.02.12	05.01.03.11 SHT Operations Manual Update November 2021	Document
07.03.05.01.02.13	05.01.03.12 SHT Power Bill Sheet 1	Document
07.03.05.01.02.14	05.01.03.13 SHT Power Bill Sheet 2	Document
07.03.05.01.02.15	05.01.03.14 SHT Power Bill Sheet 3	Document
07.03.05.01.02.16	05.01.03.15 SHT Power Bills 2013-2017	Document
07.03.05.01.02.17	06.18 02.01.01.01 Operations Manual 2020	Document
07.03.05.01.02.18	06.19 02.01.01.02 Maintenance Manual 2020	Document
07.03.05.01.02.19	06.20 02.01.02.01 Administration Manual	Document
07.03.05.01.02.20	06.21 02.01.02.02 Appendix 1 SHTC Asset Replacement	Document
07.03.05.01.02.21	06.22 02.01.02.02 Diagrams Manual	Document
07.03.05.01.02.22	06.23 02.01.03.01.04 SHT CCCS Operations Manual	Document
07.03.05.01.02.23	06.25 02.01.05.01 Transfer of Liquid from Contaminated tank to waste tank	Document
07.03.05.01.02.24	06.26 02.01.05.05 Emergency Management Manual	Document
07.03.05.01.02.25	06.27 02.01.05.06 Emergency Management Procedures	Document
07.03.05.01.02.26	06.30 02.02.05 List of MSDS	Document
07.03.05.01.02.27	06.34 02.03.04.01 Road & Maintenance Worker Training Task Book	Document
07.03.05.01.02.28	06.35 02.03.04.02 Technician Training	Document
07.03.05.01.02.29	06.36 02.03.04.03 Fitter	Document
07.03.05.01.02.30	06.37 02.03.04.04 Fitter Initial Training Task Book	Document
07.03.05.01.02.31	06.38 02.03.04.05 General Questions 1	Document
07.03.05.01.02.32	06.39 02.03.04.06 General Questions 2	Document

Document Reference	Document Title	Type
07.03.05.01.02.33	06.40 02.03.04.07 Road and Maintenance Worker	Document
07.03.05.01.02.34	06.41 02.03.04.08 SHT Assessment Evaluation Form	Document
07.03.05.01.02.35	06.42 02.03.04.16 TC Task Book	Document
07.03.05.01.02.36	06.43 02.03.04.18 Techs	Document
07.03.05.01.02.37	06.44 02.04.02.01 Power Costs	Document
07.03.05.01.02.38	06.46 02.05.01.01 Tunnel Air Quality Reports	Document
07.03.05.01.02.39	06.48 02.05.03.01 Traffic Data	Document
07.03.05.01.02.40	06.50 02.06.02 List of Suppliers & Contractors August 2021	Document
07.03.05.01.02.41	06.54 02.09 Mobile and Conduit Licences	Document
07.03.05.01.02.42	06.55 02.10 Telecommunication Company Licenses	Document
07.03.05.01.02.43	06.56 02.11.01 Australian Standards	Document
07.03.05.01.02.44	15 E3 Advisory SHT Asset Replacement & Refurbishment Model and MSF August 2021-	Document
07.03.05.01.02.45	16 EAMP VOL 2 ISSUE DEC2020-	Document
07.03.05.01.02.46	33 EAMP Vol 1 Issues 2020	Document
07.03.05.01.03	05.01.04 TRANTEK	Folder
07.03.05.01.03.01	05.01.04.01 SHT TMST presentation 101121	Document
07.03.05.01.04	05.01.05 Other	Folder
07.03.05.01.04.01	05.01.05.06 SHTC Staff information documen	Folder
07.03.05.01.04.01.01	05.01.05.06.04 E3 Report	Folder
07.03.05.01.04.01.01.01	05.01.05.06.04.01 01.07.06.1 E	Document
07.03.05.01.04.01.01.02	05.01.05.06.04.02 01.07.06.2 E	Document
07.03.05.01.04.01.01.03	05.01.05.06.04.03 01.07.06.3 E	Document
07.03.05.01.04.01.01.04	05.01.05.06.04.04 01.07.06.4 E	Document
07.03.05.01.04.01.01.05	05.01.05.06.04.05 01.07.06.5 E	Document
07.03.05.01.04.01.02	05.01.05.06.01 SHTC Salary Costs	Document

Document Reference	Document Title	Type
07.03.05.01.04.01.03	05.01.05.06.02 Maintenance Enterprise Agreement 2018	Document
07.03.05.01.04.01.04	05.01.05.06.03 Operations Enterprise Agreement 2018	Document
07.03.05.01.04.02	05.01.05.01 SHT Mainpac Asset Register	Document
07.03.05.01.04.03	05.01.05.02 Transport-for-NSW-Asset-Management-Framework-Final-(12-February-2021)	Document
07.03.05.01.04.04	05.01.05.03 Guidance Note - SHT Asset Quantity Supplement	Document
07.03.05.01.04.05	05.01.05.04 SHT Veolia Invoices	Document
07.03.05.01.04.06	05.01.05.05 SHT Coss-Elec	Document
07.03.05.01.04.07	05.01.05.07 AMT5 Operator Issues List 30 Novmber 2021	Document
07.03.05.01.04.08	05.01.05.08 SHT Stand by Power Generation	Document
07.03.05.01.04.09	06.60 2021 Deluge Maintenance Report	Document
07.03.05.01.04.10	06.64 Appendix 2 SHTC Asset replacement	Document
07.03.05.01.04.11	06.70 Fire Exteniguisher Replacements November 2020	Document
07.03.05.01.04.12	06.71 Maintenance Sinking Fund 2021	Document
07.03.05.01.04.13	07 Emergency Management	Document
07.03.05.01.04.14	08 Abbreviations	Document
07.03.05.01.04.15	09 Appendix 2 SHTC Asset replacement-	Document
07.03.05.01.04.16	11 Appendix A - RMS Email Evans and Peck-	Document
07.03.05.01.04.17	12 Cathodic Protection Survey Results 2021-	Document
07.03.05.01.04.18	13 Combined RA Test Results August 2021-	Document
07.03.05.01.04.19	14 Deluge Maintenance Report 2021-	Document
07.03.05.01.04.20	17 Evans & Peck 2009 SHT Replacement Refurbi-	Document
07.03.05.01.04.21	18 Fire Exteniguisher Replacements November 2020-	Document
07.03.05.01.04.22	19 Immersed Tube Monitoring Survey July August 2020-	Document
07.03.05.01.04.23	20 Infrared Thrmography Report Sept 2020-	Document

Document Reference	Document Title	Type
07.03.05.01.04.24	21 Maintenance Sinking Fund 2021-	Document
07.03.05.01.04.25	22 mobile plant-	Document
07.03.05.01.04.26	23 ROAD SURFACE INSPECTIONS-	Document
07.03.05.01.04.27	24 SHT Fans AUDIT REPORT 2020-	Document
07.03.05.01.04.28	25 SHT Official Souvenir Publication Aug 2012-	Document
07.03.05.01.04.29	26 SHT UPS BATTERY REPORT JUNE 2021-	Document
07.03.05.01.04.30	27 SHT WHS and Operational improvements-	Document
07.03.05.01.04.31	28 Sydney Harbour Tunnel Annual Generator Report 2020-	Document
07.03.05.01.04.32	29 Sydney Harbour Tunnel Marine Works-	Document
07.03.05.01.04.33	30 Sydney Harbour Tunnel Revaluation Dec 2020-	Document
07.03.05.01.04.34	31 The Story Of The Sydney Harbour Tunnel (comp) - Elizabeth Feizkhah-	Document
07.03.05.01.04.35	32 Tunnel design summary doc (source unknown)-	Document
07.03.05.01.05	05.01.06 SHT Plans	Folder
07.03.05.01.05.01	05.01.06.01 _0121	Document
07.03.05.01.05.02	05.01.06.02 _2013	Document
07.03.05.01.05.03	05.01.06.03 _2514	Document
07.03.05.01.05.04	05.01.06.04 _2517	Document
07.03.05.01.05.05	05.01.06.05 _2520	Document
07.03.05.01.05.06	05.01.06.06 _2521	Document
07.03.05.01.05.07	05.01.06.07 _2523	Document
07.03.05.01.05.08	05.01.06.08 _2527	Document
07.03.05.01.05.09	05.01.06.09 _2528	Document
07.03.05.01.05.10	05.01.06.10 _2531	Document
07.03.05.01.05.11	05.01.06.11 _4948	Document
07.03.05.01.05.12	05.01.06.12 _4948.2	Document
07.03.05.01.05.13	05.01.06.13 _4948.3	Document

Document Reference	Document Title	Type
07.03.05.01.05.14	05.01.06.14 _4948.8	Document
07.03.05.01.06	05.01.02 SHT EIS	Document
07.03.05.02	05.02 Western Harbour Tunnel	Folder
07.03.05.02.01	05.02.01 WHT Main Works SWTC	Folder
07.03.05.02.01.01	05.02.01.01 Appendix G.2 of the WHT Main Works SWTC (Package 2)	Document
07.03.05.02.01.02	05.02.01.02 Appendix G.2 of the WHT Main Works SWTC (Package 2) - WORD	Document
07.03.05.02.01.03	05.02.01.03 Contractor Reporting Obligations - Information Document	Document
07.03.05.02.02	05.02.02 WHT Main Works Reference Design	Folder
07.03.05.02.02.01	05.02.02.01 Reference Design Drawings	Folder
07.03.05.02.02.01.01	05.02.02.01.01 SF2020-004708-WH10	Document
07.03.05.02.02.01.02	05.02.02.01.02 SF2020-004708-WH10	Document
07.03.05.02.02.01.03	05.02.02.01.03 SF2020-004708-WH10	Document
07.03.05.02.02.01.04	05.02.02.01.04 SF2020-004708-WH10	Document
07.03.05.02.02.01.05	05.02.02.01.05 SF2020-004708-WH10	Document
07.03.05.02.02.01.06	05.02.02.01.06 SF2020-004708-WH10	Document
07.03.05.02.02.01.07	05.02.02.01.07 SF2020-004708-WH10	Document
07.03.05.02.02.01.08	05.02.02.01.08 SF2020-004708-WH10	Document
07.03.05.02.02.01.09	05.02.02.01.09 SF2020-004708-WH10	Document
07.03.05.02.02.01.10	05.02.02.01.10 SF2020-004708-WH10	Document
07.03.05.02.02.01.11	05.02.02.01.11 SF2020-004708-WH10	Document
07.03.05.02.02.01.12	05.02.02.01.12 SF2020-004708-WH10	Document
07.03.05.02.02.01.13	05.02.02.01.13 SF2020-004708-WH10	Document
07.03.05.02.02.01.14	05.02.02.01.14 SF2020-004708-WH10	Document
07.03.05.02.02.01.15	05.02.02.01.15 SF2020-004708-WH10	Document
07.03.05.02.02.01.16	05.02.02.01.16 SF2020-004708-WH10	Document

Document Reference	Document Title	Type
07.03.05.02.02.01.17	05.02.02.01.17 SF2020-004708-WH10	Document
07.03.05.02.02.02	05.02.02.02 Guidance Note	Folder
07.03.05.02.02.02.01	05.02.02.02.01 211001 - WHT+SHT Asset Manager	Document
07.03.05.02.03	05.02.03 WHT Main Works EOI Document	Folder
07.03.05.02.03.01	05.02.03.01 WHT Main Works - Invitation for EOI - Main Body - FINAL 1.0	Document
07.03.05.02.04	05.02.04 LCC Model	Folder
07.03.05.02.04.01	05.02.04.01 LCC Model - Cover Note - September 2021	Document
07.03.05.02.04.02	05.02.04.02 CICA-TFN-002-D00X - LCCM AM Template - User Guide.v00.07	Document
07.03.05.02.04.03	05.02.04.03 CICA-TFN-002-D00X - LCCM Generator - User Guide.v00.03	Document
07.03.05.02.04.04	05.02.04.04 LCCM Generation Tool vRC.0.c.2	Document
07.03.05.02.04.05	05.02.04.05 LCCM Reports v00.03	Document
07.03.05.02.04.06	05.02.04.06 NextGen LCCM AM Template vRC.0.c.2.takeoff_load	Document
07.03.05.02.04.07	05.02.04.07 LCC Model - Guidance Note - copying table headings	Document
07.03.05.02.05	05.02.05 WHT Traffic Estimates A	Document
07.03.05.03	05.03 MIP Stream 5	Folder
07.03.05.03.01	05.03.05 Presentation Slides	Folder
07.03.05.03.01.01	05.03.05.01 1.08.01 WHTBL MIP Stream 5 - Overview Briefing slidepack	Document
07.03.05.03.01.02	05.03.05.02 1.08.02 210707 - WHT+SHT AM - MIP Reference Slides	Document
07.03.05.03.01.03	05.03.05.03 1.08.03 20210212-Transport-for-NSW-Asset-Management-Framework-Final	Document
07.03.05.03.01.04	05.03.05.04 1.08.04 210714 Professional AM Brief	Document
07.03.05.03.01.05	05.03.05.05 210906 - WHT+SHT AM Engagement Process	Document
07.03.05.03.02	05.03.01 1.01 WHTBL MIP Stream 5 - Industry Brief and Questions	Document

Document Reference	Document Title	Type
07.03.05.03.03	05.03.02 1.02 WHTBL MIP Stream 5 - Probity Protocols and EDR Use (Part 2)	Document
07.03.05.03.04	05.03.03 1.03.01 WHTBL MIP Stream 5 - Industry Briefing and Questions (Part 2)	Document
07.03.05.03.05	05.03.04 1.05 WHTBL MIP Stream 5 - Concept of Operations (Rev F3R)	Document
07.03.05.04	05.04 ITP Presentation Slides	Folder
07.03.05.04.01	05.04.01 ITP Week 2 2101006 Residual Asset Life Adjustment_	Document
07.03.05.04.02	05.04.02 ITP Week1 Knowledge Transfer Slide Deck	Document
07.03.05.04.03	05.04.03 20210927 LCCM Tool System Brief TfNSW	Document
07.03.05.05	05.05 Schedule 36 - ARR calculator	Folder
07.03.05.05.01	05.05.01 Schedule 36 ARR Amount Calculator_V0_Protected	Document
07.03.05.05.02	05.05.02 Schedule 36 ARR Amount Calculator_V0_Unprotected	Document
07.03.05.06	05.06 Other	Folder
07.03.05.06.01	05.06.02 Insurance Information Documents	Folder
07.03.05.06.01.01	05.06.02.01 2021.22 Transport for NSW CoC	Document
07.03.05.06.01.02	05.06.02.02 DRAFT MD Wording	Document
07.03.05.06.01.03	05.06.02.03 Statement of cover TMF 2021 (1)	Document
07.03.05.06.02	05.06.01 TfNSW - Asset Resilience Strategy	Document
07.03.06	Contract Administration Tools	Folder
07.03.06.01	AM Fee Pricing Schedule	Folder
07.03.06.01.01	Ventia_WHT + SHT AM_RFT - RS8.1 App1 AM Fee Pricing Schedule-V2.04	Document
07.03.06.02	ARRF	Folder
07.03.06.02.01	Schedule 31 ARR Amount Calculator_V2.04	Document

PART B – LAND, PROPERTY AND THIRD PARTY AGREEMENTS

SCHEDULE 15

Approvals

(Clause 7.2)

Part A: Approvals to be obtained by the Principal

The Planning Approval.

Part B: Approval conditions to be undertaken by the Principal or the Asset Manager

- (a) The Asset Manager must fulfil all the conditions and requirements of the Planning Approval except where such conditions do not relate to the AM Services or the table below allocates responsibilities to the Principal.
- (b) Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule to submit any information, notifications, reports, plans and other documents (**Approval Documents**) to the Secretary (as defined in the Planning Approval) (**Secretary**) within a specified timeframe is subject to the Asset Manager having first provided to the Principal drafts of the Approval Documents in a form which meets the requirements of this deed, in accordance with the following timetable:
 - (i) provide a first draft to the Principal a reasonable period (of no greater than 25 Business Days) in advance of the date upon which Approval Documents are to be submitted to the Secretary;
 - (ii) if a second draft is required by the Principal, provide a second draft to the Principal not less than 8 Business Days in advance of the date upon which the Approval Document(s) are required to be submitted to the Secretary; and
 - (iii) provide the form of Approval Document/s to be submitted to the Principal 4 Business Days prior to the date upon which the Approval Document/s are required to be submitted to the Secretary.
- (c) In respect of any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule to submit any Approval Document to or notify the Secretary or a third party in a timeframe of 48 hours or less, such Approval Document or notice must be provided to the Principal in accordance with the requirements of this deed and in a sufficient timeframe to allow the Principal to comply with the relevant condition.
- (d) The Asset Manager must keep the Principal informed of all information, notifications, reports, plans and other documentation which they are required to submit to the Secretary or to any other third party in accordance with this Schedule 15 by providing the Principal with a copy of any such documents as soon as practicable after any such submission.
- (e) Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule will not limit the Asset Manager's obligations under this deed to perform the AM Services in accordance with this deed. The Asset Manager must provide information and assistance as reasonably required by the Principal and within a sufficient timeframe to enable the Principal to comply with conditions for which the Principal is responsible (in full or in part) under this schedule.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
Minister's Conditions of Approval	
A1	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A2	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A3	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A4	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A5	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A6	This condition is not relevant to the AM Services.
A7	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A8	The Asset Manager is responsible for this Planning Approval condition except where it has been specifically stated in this Schedule.
A9	The Principal is responsible for this Planning Approval condition.
A10	The Principal is only responsible for submitting the Staging Report to the Planning Secretary and the Asset Manager is responsible for all other aspects of this Planning Approval condition.
A11(a)	This condition is not relevant to the AM Services.
A12	The Principal is only responsible for submitting the Staging Report to the Planning Secretary. The Asset Manager is responsible for all other aspects of this Planning Approval condition after the Date of WHT Opening Completion.
A14	The Principal is responsible for this Planning Approval condition that relate to construction phase obligations, as well as providing the revised Staging Report to the Secretary during all phases. The Asset Manager is responsible for all other aspects of this Planning Approval condition after the Date of WHT Opening Completion.
A15	The Principal is responsible for this Planning Approval condition that relate to construction phase obligations, as well as providing any strategy, plan or program to the Secretary during all phases. The Asset Manager is responsible for all other aspects of this Planning Approval condition after the Date of WHT Opening Completion.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
A16	This condition is not relevant to the AM Services.
A17	This condition is not relevant to the AM Services.
A18	This condition is not relevant to the AM Services.
A19	This condition is not relevant to the AM Services.
A20	This condition is not relevant to the AM Services.
A21	The Principal is responsible for this Planning Approval condition.
A22	The Asset Manager must assist the Principal in any such audit as directed by the Secretary.
A23	The Principal is responsible for this Planning Approval condition.
A24	This condition is not relevant to the AM Services.
A25	This condition is not relevant to the AM Services.
A26	This condition is not relevant to the AM Services.
A27(c)	This condition is not relevant to the AM Services.
A27(d)-(e)	This condition is not relevant to the AM Services, except where it relates to Condition A10, which is the responsibility of the Asset Manager as detailed above against that condition.
A27(h)-(k)	This condition is not relevant to the AM Services.
A28(b)	The Principal is responsible for this Planning Approval condition.
A29	The Asset Manager must provide any necessary information to assist the Principal in meeting this condition.
A30	This condition is not relevant to the AM Services.
A31	This condition is not relevant to the AM Services.
A32	The Principal is responsible for this Planning Approval condition.
A33	This condition is not relevant to the AM Services.
A34(a)-(d), & (g)-(h)	This condition is not relevant to the AM Services.
A34(e)-(f)	The Asset Manager is responsible for this condition after the Date of WHT Opening Completion.
A35	The Principal is responsible for this Planning Approval condition.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
A36	The Asset Manager must assist the Principal in its compliance of this condition during the operation phase.
A37	The Principal is responsible for this Planning Approval condition.
A38	The Asset Manager is responsible for making available such access provisions necessary to both the asset and their EMS so that Independent Audits can comply with the requirements of this Planning Approval condition.
A39	The Asset Manager is responsible for making available such access provisions necessary to both the asset and their EMS so that Independent Audits can comply with the requirements of this Planning Approval condition.
A40	The Asset Manager is required to review and provide responses to the Principal on each Independent Audit Report commissioned, as well as implement any finding(s) as appropriate. Responsibility of the Principal will be limited to communication including providing responses to the Planning Secretary.
A42	The Principal and Asset Manager are to agree that ongoing audits during the operational phase should cease and a subsequent request made to the Secretary.
A43	The Asset Manager must notify the Principal immediately once it becomes aware of an incident and its notification in accordance with the condition.
A47	This condition is not relevant to the AM Services.
A48	This condition is not relevant to the AM Services.
B1	The Asset Manager is to prepare and implement a project specific Community Communication Strategy (CCS) in accordance with the Planning Approval condition for the operation phase.
B2(h)(i)	The Asset Manager must fulfil its obligations in accordance with the Strategy during operation of the asset.
B3	This condition is not relevant to the AM Services.
B4	This condition is not relevant to the AM Services.
B5	The Principal is responsible for this Planning Approval condition as it relates to the works, whereas the Asset Manager is responsible for obtaining approval and implementing a Community Communication Strategy during the first 12 months following the Date of WHT Opening Completion.
B6	This condition is not relevant to the AM Services.
B7	The Asset Manager is responsible for this condition during the first 12 months following the Date of WHT Opening Completion.
B11	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
B12	This condition is not relevant to the AM Services.
B13	This condition is not relevant to the AM Services.
B14	This condition is not relevant to the AM Services.
C1	This condition is not relevant to the AM Services.
C2	This condition is not relevant to the AM Services.
C3	This condition is not relevant to the AM Services.
C4	This condition is not relevant to the AM Services.
C5	This condition is not relevant to the AM Services.
C6	This condition is not relevant to the AM Services.
C7	This condition is not relevant to the AM Services.
C8	This condition is not relevant to the AM Services.
C9	This condition is not relevant to the AM Services.
C10	This condition is not relevant to the AM Services.
C11	This condition is not relevant to the AM Services.
C12	This condition is not relevant to the AM Services.
C13	This condition is not relevant to the AM Services.
C14	This condition is not relevant to the AM Services.
C15	This condition is not relevant to the AM Services.
C16	This condition is not relevant to the AM Services.
C17	This condition is not relevant to the AM Services.
C18	This condition is not relevant to the AM Services.
C19	This condition is not relevant to the AM Services.
C20	This condition is not relevant to the AM Services.
C21	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
D8	The Principal is responsible for the procurement of consultancy services to satisfy this Planning Approval condition for a period up to 10 years following completion of construction activities. The Asset Manager will be responsible for ensuring delivery of monitoring scope as contracted and advising the Principal of any non-compliance.
E2(a)(i)	The Asset Manager is responsible for providing two representatives to meet the requirements of this Planning Approval condition.
E2(a)(ii)-(iv)	The Principal is responsible for this Planning Approval condition.
E3	The Principal is responsible for this Planning Approval condition.
E4	The Principal is responsible for this Planning Approval condition.
E7	The Asset Manager is to refer to Condition E6 Table 3, page 34 of the CSSI-8863 Instrument of Approval within Planning Approval Condition E22.
E11	The Principal is responsible for this Planning Approval condition.
E15	This condition is not relevant to the AM Services.
E16	This condition is not relevant to the AM Services.
E17	This condition is not relevant to the AM Services.
E18	The Asset Manager is responsible for compliance with this condition after the Date of WHT Opening Completion.
E19	The Principal is responsible for this Planning Approval condition.
E20	The Principal is responsible for this Planning Approval condition.
E22	The Principal's responsibility is limited to the installation of the monitoring equipment and the Asset Manager is responsible for all other aspects of this Planning Approval condition.
E28	The Asset Manager is responsible for this condition from the Date of WHT Opening Completion.
E32	The Principal is responsible for this Planning Approval condition, however, the Asset Manager is to provide any necessary access, information and or data to assist the Principal in meeting this condition.
E37	This condition is not relevant to the AM Services.
E38	This condition is not relevant to the AM Services.
E39	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E40	This condition is not relevant to the AM Services.
E41	This condition is not relevant to the AM Services.
E42	This condition is not relevant to the AM Services.
E43	This condition is not relevant to the AM Services.
E44	This condition is not relevant to the AM Services.
E45	This condition is not relevant to the AM Services.
E46	This condition is not relevant to the AM Services.
E47	This condition is not relevant to the AM Services.
E48	This condition is not relevant to the AM Services.
E49	This condition is not relevant to the AM Services.
E50	This condition is not relevant to the AM Services.
E51	This condition is not relevant to the AM Services.
E52	This condition is not relevant to the AM Services.
E53	This condition is not relevant to the AM Services.
E54	This condition is not relevant to the AM Services.
E55	This condition is not relevant to the AM Services.
E56	This condition is not relevant to the AM Services.
E57	This condition is not relevant to the AM Services.
E58	This condition is not relevant to the AM Services.
E59	This condition is not relevant to the AM Services.
E60	This condition is not relevant to the AM Services.
E61	This condition is not relevant to the AM Services.
E62	This condition is not relevant to the AM Services.
E63	This condition is not relevant to the AM Services.
E64	This condition is not relevant to the AM Services.
E65	This condition is not relevant to the AM Services.
E66	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E67	This condition is not relevant to the AM Services.
E68	This condition is not relevant to the AM Services.
E69	This condition is not relevant to the AM Services.
E70	This condition is not relevant to the AM Services.
E71	This condition is not relevant to the AM Services.
E72	This condition is not relevant to the AM Services.
E73	This condition is not relevant to the AM Services.
E74	This condition is not relevant to the AM Services.
E75	This condition is not relevant to the AM Services.
E76	This condition is not relevant to the AM Services.
E77	This condition is not relevant to the AM Services.
E78	This condition is not relevant to the AM Services.
E79	This condition is not relevant to the AM Services.
E80	This condition is not relevant to the AM Services.
E81	This condition is not relevant to the AM Services.
E82	This condition is not relevant to the AM Services.
E83	This condition is not relevant to the AM Services.
E84	This condition is not relevant to the AM Services.
E85	This condition is not relevant to the AM Services.
E86	This condition is not relevant to the AM Services.
E87	This condition is not relevant to the AM Services.
E88	This condition is not relevant to the AM Services.
E89	This condition is not relevant to the AM Services.
E90	This condition is not relevant to the AM Services.
E91	This condition is not relevant to the AM Services.
E92	The Principal is responsible for this Planning Approval condition, however, the Asset Manager is to provide any necessary access, information and or data to assist the Principal in meeting this condition.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E93	The Asset Manager is responsible for providing the Principal with necessary information and data to comply with this Planning Approval condition.
E95	This condition is not relevant to the AM Services.
E96	This condition is not relevant to the AM Services.
E97	This condition is not relevant to the AM Services.
E98	This condition is not relevant to the AM Services.
E99	This condition is not relevant to the AM Services.
E100	This condition is not relevant to the AM Services.
E101	This condition is not relevant to the AM Services.
E102	This condition is not relevant to the AM Services.
E103	This condition is not relevant to the AM Services.
E104	This condition is not relevant to the AM Services.
E104	This condition is not relevant to the AM Services.
E105	The Principal is responsible for this Planning Approval condition.
E106	The Principal is responsible for this Planning Approval condition.
E107	This condition is not relevant to the AM Services.
E108	The Principal is responsible for this Planning Approval condition.
E109	The Principal is responsible for this Planning Approval condition.
E110	The Principal is responsible for this Planning Approval condition.
E111	This condition is not relevant to the AM Services.
E112	The Principal is responsible for this Planning Approval condition.
E113	The Principal is responsible for this Planning Approval condition.
E114	This condition is not relevant to the AM Services.
E115	This condition is not relevant to the AM Services.
E116	This condition is not relevant to the AM Services.
E117	This condition is not relevant to the AM Services.
E118	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E119	This condition is not relevant to the AM Services.
E120	This condition is not relevant to the AM Services.
E121	This condition is not relevant to the AM Services.
E122	This condition is not relevant to the AM Services.
E123	This condition is not relevant to the AM Services.
E124	This condition is not relevant to the AM Services.
E125	This condition is not relevant to the AM Services.
E126	The Asset Manager is responsible for implementing the Sustainability Strategy after the Date of WHT Opening Completion.
E128	This condition is not relevant to the AM Services.
E129	This condition is not relevant to the AM Services.
E130	This condition is not relevant to the AM Services.
E131	This condition is not relevant to the AM Services.
E132	This condition is not relevant to the AM Services.
E133	This condition is not relevant to the AM Services.
E134	This condition is not relevant to the AM Services.
E135	This condition is not relevant to the AM Services.
E136	This condition is not relevant to the AM Services.
E137	This condition is not relevant to the AM Services.
E138	This condition is not relevant to the AM Services.
E139	This condition is not relevant to the AM Services.
E140	This condition is not relevant to the AM Services.
E141	This condition is not relevant to the AM Services.
E142	This condition is not relevant to the AM Services.
E143	This condition is not relevant to the AM Services.
E144	This condition is not relevant to the AM Services.
E145	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E146	This condition is not relevant to the AM Services.
E147	This condition is not relevant to the AM Services.
E149	This condition is not relevant to the AM Services.
E150	This condition is not relevant to the AM Services.
E151	This condition is not relevant to the AM Services.
E152	This condition is not relevant to the AM Services.
E154	This condition is not relevant to the AM Services.
E155	This condition is not relevant to the AM Services.
E156	This condition is not relevant to the AM Services.
E157	This condition is not relevant to the AM Services.
E158	This condition is not relevant to the AM Services.
E159	This condition is not relevant to the AM Services.
E160	This condition is not relevant to the AM Services.
E161	This condition is not relevant to the AM Services.
E162	This condition is not relevant to the AM Services.
E163	The Asset Manager is responsible for this Planning Approval Condition after the Date of WHT Opening Completion so as to maintain operational performance / compliance with design objectives.
E164	This condition is not relevant to the AM Services.
E165	This condition is not relevant to the AM Services.
E166	This condition is not relevant to the AM Services.
E167	This condition is not relevant to the AM Services.
E168	This condition is not relevant to the AM Services.
E169	This condition is not relevant to the AM Services.
E170	This condition is not relevant to the AM Services.
E171	This condition is not relevant to the AM Services.
E172	This condition is not relevant to the AM Services.
E173	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E174	This condition is not relevant to the AM Services.
E175	This condition is not relevant to the AM Services.
E176	This condition is not relevant to the AM Services.
E177	This condition is not relevant to the AM Services.
E178	This condition is not relevant to the AM Services.
E179	This condition is not relevant to the AM Services.
E180	This condition is not relevant to the AM Services.
E181	This condition is not relevant to the AM Services.
E182	This condition is not relevant to the AM Services.
E183	This condition is not relevant to the AM Services.
E184	This condition is not relevant to the AM Services.
E185	This condition is not relevant to the AM Services.
E186	This condition is not relevant to the AM Services.
E187	The Principal is responsible for this Planning Approval Condition.
E188	This condition is not relevant to the AM Services.
E189	This condition is not relevant to the AM Services.
E190	This condition is not relevant to the AM Services.
E191	This condition is not relevant to the AM Services.
E192	The Principal is responsible for this Planning Approval condition.
E193	The Principal carries responsibility of this Planning Approval condition until the expiry of the defects liability period under the Main Works P2 Contract and then responsibility is passed onto the Asset Manager with respect to any surface assets that are subject to compliance with this Planning Approval condition.
E194	The Principal carries responsibility of this condition until the expiry of the defects liability period under the Main Works P2 Contract and then responsibility is passed onto the Asset Manager with respect to any surface assets that are subject to compliance with this Planning Approval condition.
E195	This condition is not relevant to the AM Services.
E196	This condition is not relevant to the AM Services.
E197	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
E198	This condition is not relevant to the AM Services.
E199	This condition is not relevant to the AM Services.
E200	This condition is not relevant to the AM Services.
E204	This condition is not relevant to the AM Services.
E207	This condition is not relevant to the AM Services.
E208	This condition is not relevant to the AM Services.
E209	This condition is not relevant to the AM Services.
E209	This condition is not relevant to the AM Services.
E210	This condition is not relevant to the AM Services.
E212	This condition is not relevant to the AM Services.
E213	This condition is not relevant to the AM Services.
E214	This condition is not relevant to the AM Services.
E215	This condition is not relevant to the AM Services.
E216	This condition is the responsibility of the Asset Manager after the expiry of the defects liability period under the Main Works P2 Contract.
E217	The Principal is responsible for this Planning Approval condition.
E218	This condition is not relevant to the AM Services.
E219	The Principal is responsible for compliance with this Planning Approval condition.
E220	This condition is not relevant to the AM Services.
E222	This condition is not relevant to the AM Services.
E223	This condition is not relevant to the AM Services.
E224	This condition is not relevant to the AM Services.
Revised environmental management measures	
CTT1	This condition is not relevant to the AM Services.
CTT2	This condition is not relevant to the AM Services.
CTT3	This condition is not relevant to the AM Services.
CTT4	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
CTT5	This condition is not relevant to the AM Services.
CTT6	This condition is not relevant to the AM Services.
CTT7	This condition is not relevant to the AM Services.
CTT8	This condition is not relevant to the AM Services.
CTT9	This condition is not relevant to the AM Services.
CTT10	This condition is not relevant to the AM Services.
CTT11	This condition is not relevant to the AM Services.
CTT12	This condition is not relevant to the AM Services.
CTT13	This condition is not relevant to the AM Services.
CTT14	This condition is not relevant to the AM Services.
CTT15	This condition is not relevant to the AM Services.
CTT16	This condition is not relevant to the AM Services.
CTT17	This condition is not relevant to the AM Services.
CTT18	This condition is not relevant to the AM Services.
CTT19	This condition is not relevant to the AM Services.
OT2	This condition is not relevant to the AM Services.
OT3	This condition is not relevant to the AM Services.
OT4	This condition is not relevant to the AM Services.
CNV1	This condition is not relevant to the AM Services.
CNV2	This condition is not relevant to the AM Services.
CNV3	This condition is not relevant to the AM Services.
CNV4	This condition is not relevant to the AM Services.
CNV5	This condition is not relevant to the AM Services.
CNV6	This condition is not relevant to the AM Services.
CNV7	This condition is not relevant to the AM Services.
CNV8	This condition is not relevant to the AM Services.
CNV9	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
CNV10	This condition is not relevant to the AM Services.
ONV1	This condition is not relevant to the AM Services.
ONV2	The Asset Manager is responsible for providing the Principal with necessary information and data to comply with this Planning Approval condition.
ONV3	This condition is not relevant to the AM Services.
AQ1	This condition is not relevant to the AM Services.
AQ2	This condition is not relevant to the AM Services.
HH1	This condition is not relevant to the AM Services.
HH2	This condition is not relevant to the AM Services.
NAH1	This condition is not relevant to the AM Services.
NAH2	This condition is not relevant to the AM Services.
NAH3	This condition is not relevant to the AM Services.
NAH4	This condition is not relevant to the AM Services.
NAH5	This condition is not relevant to the AM Services.
NAH6	This condition is not relevant to the AM Services.
NAH7	This condition is not relevant to the AM Services.
NAH8	This condition is not relevant to the AM Services.
NAH9	This condition is not relevant to the AM Services.
NAH10	This condition is not relevant to the AM Services.
NAH11	This condition is not relevant to the AM Services.
NAH12	This condition is not relevant to the AM Services.
NAH13	This condition is not relevant to the AM Services.
NAH14	This condition is not relevant to the AM Services.
NAH15	This condition is not relevant to the AM Services.
NAH16	This condition is not relevant to the AM Services.
NAH17	This condition is not relevant to the AM Services.
NAH18	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
NAH19	This condition is not relevant to the AM Services.
NAH20	This condition is not relevant to the AM Services.
NAH21	This condition is not relevant to the AM Services.
NAH22	This condition is not relevant to the AM Services.
NAH23	This condition is not relevant to the AM Services.
NAH24	This condition is not relevant to the AM Services.
NAH25	This condition is not relevant to the AM Services.
AH2	This condition is not relevant to the AM Services.
AH3	This condition is not relevant to the AM Services.
AH4	This condition is not relevant to the AM Services.
AH5	This condition is not relevant to the AM Services.
AH6	This condition is not relevant to the AM Services.
AH7	This condition is not relevant to the AM Services.
AH8	This condition is not relevant to the AM Services.
AH9	This condition is not relevant to the AM Services.
AH10	This condition is not relevant to the AM Services.
SG1	This condition is not relevant to the AM Services.
SG2	This condition is not relevant to the AM Services.
SG3	This condition is not relevant to the AM Services.
SG4	This condition is not relevant to the AM Services.
SG5	This condition is not relevant to the AM Services.
SG6	This condition is not relevant to the AM Services.
SG7	This condition is not relevant to the AM Services.
SG8	This condition is not relevant to the AM Services.
SG9	This condition is not relevant to the AM Services.
SG10	This condition is not relevant to the AM Services.
SG11	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
SG12	This condition is not relevant to the AM Services.
SG13	This condition is not relevant to the AM Services.
SG14	This condition is not relevant to the AM Services.
SG15	This condition is not relevant to the AM Services.
SG16	This condition is not relevant to the AM Services.
SG18	This condition is not relevant to the AM Services.
SG19	This condition is not relevant to the AM Services.
SG20	The Asset Manager is responsible for compliance with this requirement after the Date of WHT Opening Completion.
SG22	This condition is not relevant to the AM Services.
WQ1	This condition is not relevant to the AM Services.
WQ2	This condition is not relevant to the AM Services.
WQ3	This condition is not relevant to the AM Services.
WQ4	This condition is not relevant to the AM Services.
WQ5	This condition is not relevant to the AM Services.
WQ6	This condition is not relevant to the AM Services.
WQ7	This condition is not relevant to the AM Services.
WQ8	This condition is not relevant to the AM Services.
WQ9	This condition is not relevant to the AM Services.
WQ10	This condition is not relevant to the AM Services.
WQ12	This condition is not relevant to the AM Services.
WQ13	This condition is not relevant to the AM Services.
F1	This condition is not relevant to the AM Services.
F2	This condition is not relevant to the AM Services.
F3	This condition is not relevant to the AM Services.
F4	This condition is not relevant to the AM Services.
F5	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
F6	This condition is not relevant to the AM Services.
F8	This condition is not relevant to the AM Services.
F9	This condition is not relevant to the AM Services.
B1	This condition is not relevant to the AM Services.
B2	This condition is not relevant to the AM Services.
B3	This condition is not relevant to the AM Services.
B4	This condition is not relevant to the AM Services.
B5	This condition is not relevant to the AM Services.
B6	This condition is not relevant to the AM Services.
B8	This condition is not relevant to the AM Services.
B9	This condition is not relevant to the AM Services.
B10	This condition is not relevant to the AM Services.
B11	This condition is not relevant to the AM Services.
B12	This condition is not relevant to the AM Services.
B13	This condition is not relevant to the AM Services.
B14	This condition is not relevant to the AM Services.
B15	This condition is not relevant to the AM Services.
B16	This condition is not relevant to the AM Services.
B17	This condition is not relevant to the AM Services.
B19	This condition is not relevant to the AM Services.
B20	This condition is not relevant to the AM Services.
B21	This condition is not relevant to the AM Services.
B22	This condition is not relevant to the AM Services.
B23	This condition is not relevant to the AM Services.
B24	This condition is not relevant to the AM Services.
B25	This condition is not relevant to the AM Services.
B26	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
B27	This condition is not relevant to the AM Services.
B28	This condition is not relevant to the AM Services.
B29	This condition is not relevant to the AM Services.
B30	This condition is not relevant to the AM Services.
LP1	This condition is not relevant to the AM Services.
LP2	This condition is not relevant to the AM Services.
LP3	This condition is not relevant to the AM Services.
LP4	This condition is not relevant to the AM Services.
LP5	The Principal is responsible for this REMM.
LP6	The Principal is responsible for this REMM.
LP7	The Principal is responsible for this REMM.
LP8	The Principal is responsible for this REMM.
LP9	This condition is not relevant to the AM Services.
SE1	This condition is not relevant to the AM Services.
SE2	This condition is not relevant to the AM Services.
SE3	This condition is not relevant to the AM Services.
SE4	This condition is not relevant to the AM Services.
BU1	This condition is not relevant to the AM Services.
BU2	This condition is not relevant to the AM Services.
BU3	This condition is not relevant to the AM Services.
V1	This condition is not relevant to the AM Services.
V2	This condition is not relevant to the AM Services.
V3	This condition is not relevant to the AM Services.
V4	This condition is not relevant to the AM Services.
V5	This condition is not relevant to the AM Services.
V6	This condition is not relevant to the AM Services.
V7	This condition is not relevant to the AM Services.

Planning Approval Condition number	Extent of the Principal's responsibility for the Planning Approval Condition specified
V8	This condition is not relevant to the AM Services.
V9	This condition is not relevant to the AM Services.
V10	This condition is not relevant to the AM Services.
V11	This condition is not relevant to the AM Services.
V12	This condition is not relevant to the AM Services.
HR2	This condition is not relevant to the AM Services.
HR3	This condition is not relevant to the AM Services.
HR4	This condition is not relevant to the AM Services.
HR5	This condition is not relevant to the AM Services.
WM1	This condition is not relevant to the AM Services.
WM2	This condition is not relevant to the AM Services.
WM3	This condition is not relevant to the AM Services.
WM4	This condition is not relevant to the AM Services.
WM5	This condition is not relevant to the AM Services.
SU1	This condition is not relevant to the AM Services.
SU2	This condition is not relevant to the AM Services.
CC1	This condition is not relevant to the AM Services.
GHG1	This condition is not relevant to the AM Services.
GHG2	This condition is not relevant to the AM Services.
CI1	This condition is not relevant to the AM Services.
CI2	This condition is not relevant to the AM Services.
CI3	This condition is not relevant to the AM Services.
CI4	This condition is not relevant to the AM Services.

SCHEDULE 16

Environmental Requirements

(Clause 9.12)

1. Environmental Requirements

- (a) The Asset Manager must not use the Maintenance Site or any Extra Land, or allow its Related Parties to use the Maintenance Site or any Extra Land, so that:
 - (i) any Hazardous Substance is abandoned or dumped on the Maintenance Site or any Extra Land;
 - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
 - (iii) any other substance is released from, deposited to, or emanates from, the Maintenance Site or any Extra Land such that a state of Contamination occurs.
- (b) The Asset Manager must at all times carry out, and ensure that its Related Parties carry out, the AM Services in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
- (c) The Asset Manager must, without limiting clause 7.1 of this deed:
 - (i) comply with, and ensure that its Related Parties in performing the AM Services comply with:
 - (A) all Laws relating to the Environment;
 - (B) all Environmental Notices; and
 - (C) the Project Plans; and
 - (ii) obtain and comply with all requirements of, and ensure that its Related Parties in performing the AM Services obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Maintenance Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) Unless otherwise specified in Schedule 15 (Approvals) and without limiting the Asset Manager's other obligations under this deed, and insofar as they apply to the AM Services, the Asset Manager must comply with, carry out and fulfil the conditions and requirements of the Planning Approval, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Planning Approval to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the AM Services.
- (e) The Asset Manager must immediately notify the Principal in writing as soon as the Asset Manager:

- (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law or Approval regarding the Environment in the performance of the AM Services;
 - (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the Asset Manager in relation to the information, fact or circumstance); or
 - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the Asset Manager must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.
- (f) The Asset Manager must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the Asset Manager to comply with any obligation under this section 1.

2. **Provision of Emissions and Energy Data to the Principal**

- (a) The Asset Manager must provide the Asset Manager's Emissions and Energy Data to the Principal's Representative:
 - (i) at such times as may be agreed by the Principal and the Asset Manager, or, if no such agreement is reached, within 8 Business Days of receiving written notice from the Principal indicating that it requires the Asset Manager's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that the Asset Manager is required to provide the Asset Manager's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) The Asset Manager acknowledges and agrees that the Principal may use the Asset Manager's Emissions and Energy Data for any purpose as it sees fit.

3. **Reporting Emissions and Energy Data**

- (a) This section 3 applies if, despite the operation of clause 9.13 (Liability under the NGER Legislation) of this deed, the Principal incurs a Liability under or in connection with the NGER Legislation as a result of or in connection with the AM Services.
- (b) If the Principal notifies the Asset Manager in writing that the Asset Manager is required to provide the Asset Manager's Emissions and Energy Data to the Principal, then the Asset Manager must:
 - (i) provide the Asset Manager's Emissions and Energy Data to the Principal's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
 - (A) as if the Asset Manager was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;
 - (B) in accordance with the requirements or approvals of any Authority and any reasonable directions by the Principal's Representative; and

- (C) without limiting sections 3(b)(i)(A) and 3(b)(i)(B), as may be required to enable the Principal to:
 - (aa) discharge, as and when they fall due, any obligations that it may have to provide the Asset Manager's Emissions and Energy Data to any Authority; and
 - (bb) provide to the Clean Energy Regulator, any Asset Manager's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) keep all such Asset Manager's Emissions and Energy Data as may be required to enable it to discharge its obligations under section 3(b)(i);
 - (iii) retain records of its activities that are the basis of the Asset Manager'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 Asset Manager's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under sections 3(b)(ii) and (iii) and answering questions.
- (c) Without limiting section 3(b), the Asset Manager must assist the Principal to comply with the NGER Legislation in relation to any aspect of the AM Services.
- (d) The Asset Manager acknowledges and agrees that:
- (i) the Asset Manager's Emissions and Energy Data is provided to the Principal:
 - (A) to discharge any obligations that the Principal may have to provide such Data to an Authority; and
 - (B) so that the Principal may provide to the Clean Energy Regulator any Asset Manager's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) the Principal may provide or otherwise disclose the Asset Manager's Emissions and Energy Data to any applicable Authority; and
 - (iii) nothing in this section 3 is to be taken as meaning that the Principal has agreed to perform on behalf of the Asset Manager any obligation that the Asset Manager itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

4. **Sustainability**

The Asset Manager must comply with the sustainability requirements set out in section 17.4 and Appendix E of the AM Services Specification.

5. **Waste Disposal**

- (a) The Asset Manager must:
 - (i) remove from the Maintenance Site and any Extra Land; and
 - (ii) dispose of,

any Contamination or other waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The Asset Manager must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Maintenance Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) The Asset Manager must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Asset Manager must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Asset Manager to comply with any obligation under this section, provided that the Asset Manager's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the Claim or Loss.

SCHEDULE 17

Site Access Schedule

(Clause 1 and clause 11)

1. LICENSED MAINTENANCE AREAS

- (a) The parties acknowledge and agree that:
- (i) the Licensed Maintenance Areas for the Motorways will be those areas necessary to operate any intelligent transportation system devices (such as variable message signs, closed circuit television, tunnel closure traffic lights and moveable medians) which are:
 - (A) located outside of the Motorways;
 - (B) required for the operation of the Motorways; and
 - (C) connected to:
 - (aa) in the case of the WHT Motorway, the WHT OMCS (as that term is defined in the AM Services Specification); and
 - (bb) in the case of the SHT Motorway, the SHT OMCS (as that term is defined in the AM Services Specification);
 - (ii) the Licensed Maintenance Area for the WHT Motorway will only comprise those areas of land (if any) agreed or determined in accordance with paragraph 1(c) or paragraph 1(d); and
 - (iii) the Licensed Maintenance Areas for the Motorways must not include any areas over which the Principal has granted a lease or other right of exclusive possession to a third party.
- (b) Without limiting clause 11.3 of this deed, the parties acknowledge and agree as follows:
- (i) the Asset Manager may notify the Principal that the Licensed Maintenance Areas for any of the Motorways require further refinement and amendment and may request that further refinement and amendment be agreed or determined in accordance with this paragraph 1(b);
 - (ii) as soon as practicable after receipt by the Principal of a notice issued by the Asset Manager under paragraph 1(b)(i), the Asset Manager and the Principal must form a project team which:
 - (A) comprises at least one member from each of the Principal and the Asset Manager; and
 - (B) meets regularly to discuss and seek to agree the areas to comprise the amended Licensed Maintenance Areas.
 - (c) The parties must use best endeavours to agree the Licensed Maintenance Areas which will apply in respect of the WHT Motorway on or before the commencement of the WHT Mobilisation Phase.
 - (d) If the parties are unable to agree on the relevant Licensed Maintenance Areas for the WHT Motorway by the date falling 1 month before the expected Date of

WHT Opening Completion, then the Principal must, acting reasonably, determine the Licensed Maintenance Areas by reference to what is reasonably necessary to operate the devices referred to in paragraph 1(a)(i) in respect of the WHT Motorway, and the Principal will notify the Asset Manager in writing of such determination.

- (e) Following the Licensed Maintenance Areas being agreed or determined in accordance with sections 1(b), 1(c) or 1(d), Exhibit C is deemed to be amended to include the drawings applicable to those areas as agreed or determined.

SCHEDULE 18

Terms of Access

(Clause 11)

1. Asset Manager Acknowledgements

- (a) The Asset Manager acknowledges and agrees that:
 - (i) it may not be given exclusive access to the Maintenance Site; and
 - (ii) access to the Maintenance Site or any part thereof will be subject to the Asset Manager complying with clause 11.1 (Access) and this Schedule 18.
- (b) The Asset Manager acknowledges that:
 - (i) its rights under clause 11.1 (Access) and this Schedule 18 are subject to any restrictions upon the access, possession and use of the Maintenance Site and the Motorway imposed by the Principal under the express terms of this deed;
 - (ii) its rights under clause 11.1 (Access) and this Schedule 18 are personal in nature and do not create any entitlement or interest in the Maintenance Site; and
 - (iii) it must comply with all terms of any easement, restrictions on use, covenants, agreements, arrangements or other similar arrangements together with any leases, sub-leases, licences and rights and privileges which benefit or burden the land contained in the Maintenance Site throughout the Term.
- (c) The Asset Manager acknowledges that it will have no entitlement to access the Maintenance Site under clause 11.1 (Access) and this Schedule 18 until the Asset Manager has submitted the WHS Management Plan to the Principal's Representative and the Principal's Representative has had 20 Business Days to review the WHS Management Plan and has not rejected the WHS Management Plan.

2. No Warranty by the Principal

Subject to the express terms of this deed, the Principal makes no express or implied warranty that the Maintenance Site is now or will remain suitable or adequate for all or any of the purposes contemplated in this deed and save as aforesaid all warranties (if any) implied by Law are, to the extent permitted by Law, hereby expressly negated.

SCHEDULE 19

Property Owner's Certificate

(Clause 11.3)

This Deed Poll is in favour of:

- (1) Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (the **Principal**),

and its successors and permitted assigns (together, the **Beneficiaries**)

By: [insert]

PROPERTY ADDRESS:

1. [I/We] confirm that the following works have been carried out and completed on [my/our] property to [my/our] satisfaction:

[Insert description of property works]
2. [I/We] confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. [I/We] release the Beneficiaries from all claims and actions which [I/we] may have arising out of or in connection with the works referred to in item 1.

EXECUTED as a Deed Poll.

SIGNED, SEALED and **DELIVERED** by
[NAME OF PARTY] in the presence of:

Signature of Officer

Signature of Witness

Name

Name

SCHEDULE 20

Requirements of Third Party Agreements

(Clause 9.19)

There are no Third Party Agreements as at the date of this deed, but this schedule may be populated with requirements of Third Party Agreements that are entered into after the execution of this deed.

PART C - ADMINISTRATIVE

SCHEDULE 21

Project Plans and Asset Management Plans

(Clause 9.5)

1. Warranties and Undertakings

The Asset Manager must continue to develop and promptly amend or update the AM Services Plans:

- (a) to take into account the circumstances and events referred to in clause 9.5(b) as those circumstances and events occur or come into existence; and
- (b) as otherwise specified in the AM Services Specification.

2. Principal's Direction

If the Principal's Representative believes that:

- (a) any AM Services Plan does not comply with the requirements of this deed;
- (b) any AM Services Plan will not enable the Asset Manager to comply with its obligations under this deed (including if a change to an AM Services Plan reduces the scope of work or level of effort or expertise required by that AM Services Plan, or the number of personnel or extent of surveillance required); or
- (c) the Asset Manager has not further developed, updated or amended any AM Services Plan in accordance with the requirements of this deed,

the Principal's Representative may by written notice direct the Asset Manager to further develop, update or amend the AM Services Plan so that the AM Services Plan will comply with the requirements of this deed, specifying:

- (d) the reasons why such development, updating or amending is required; and
- (e) the time within which such development, updating or amending must occur,

and the Asset Manager must:

- (f) further develop, update or amend the AM Services Plan as directed by the Principal's Representative and so that it complies with the requirements of this deed; and
- (g) submit the further developed, updated or amended AM Services Plan to the Principal's Representative within the time specified in section 2(e).

3. Asset Management Plans

- (a) The Asset Manager may, within 5 Business Days after the end of a Contract Year, submit to the Principal a proposal to change the Asset Management Plans to improve whole-of-life outcomes. This proposal may include changing the Major Repair and Replacement Works and any other change in maintenance strategies.
- (b) No later than 20 Business Days after the end of each Contract Year, the Principal and the Asset Manager must meet to review any proposal from the Asset Manager as described in section 3(a).
- (c) Any proposal submitted in accordance with section 3(a) must detail:

- (i) the effect that the amendments will have on the AM Services to be provided under the relevant Asset Management Plan;
- (ii) any change in the timing or profile of Major Repair and Replacement Works to be carried out as part of the AM Services;
- (iii) any changes to the Asset Manager's maintenance strategies (including changes to Preventive Maintenance and Corrective Maintenance) and the extent to which these are to be funded from the Asset Renewal Reserve Fund;
- (iv) any change in the forecast hours of Lane Rental Events for the following Contract Year; and
- (v) any other changes to the commercial basis on which the AM Services are to be provided,

(Asset Management Plan Amendment Proposal).

- (d) Within 30 Business Days after submission by the Asset Manager of an Asset Management Plan Amendment Proposal, the Principal will notify the Asset Manager in writing that:
 - (i) the Asset Management Plan Amendment Proposal is "Agreed";
 - (ii) the Asset Management Plan Amendment Proposal is "Agreed (Subject to Conditions)"; or
 - (iii) the Asset Management Plan Amendment Proposal is "Not Agreed".
- (e) If the Principal issues a notice under:
 - (i) section 3(d)(i), the relevant Asset Management Plan will be amended in the manner contemplated by the Asset Management Plan Amendment Proposal;
 - (ii) section 3(d)(ii), the relevant Asset Management Plan will be amended in the manner contemplated by the Asset Management Plan Amendment Proposal and the Asset Manager must satisfy the relevant conditions within the time required by the Principal in its notice under section 3(d)(ii).
 - (iii) section 3(d)(iii), the relevant Asset Management Plan will continue in effect unamended.
- (f) If the Principal does not issue a notice under section 3(d) within the timeframe required by that section, the Principal will be deemed to have issued a notice under section 3(d)(iii).
- (g) The Asset Manager must bear all costs that it incurs in preparing all Asset Management Plan Amendment Proposals.

SCHEDULE 22

Aboriginal Participation Plan Template

(Clause 9.15)

Aboriginal Participation Plan Template

The Aboriginal Procurement Policy (2021) requires that suppliers submit an Aboriginal Participation Plan for all projects valued at \$7.5m or above with their tender documents. This plan is the supplier's commitment to Aboriginal participation on the project. Plans will be finalised with the agency contract manager upon contract award and suppliers will be required to report progress against the plan quarterly.

NOTE: this is a template only and indicates the required information. Agencies may allow suppliers to use other formats.

Contracting agency	Eg; Transport for NSW
Project Name & ID	Name and ID number as per NSW e-Tendering
Project Location	Suburb and postcode or region where project will take place
Project start date	If known, or estimate
Expected project end date	
Supplier name and contact details	
Supplier ABN	
Are you an Aboriginal business?	If no, please skip next question.
Is your business recognised as an Aboriginal business by:	Please circle appropriate response: <ul style="list-style-type: none">• Supply Nation• NSW Indigenous Chamber of Commerce• None of the above.
Aboriginal Participation requirements	
Estimated contract value	Indicate estimated \$ value of contract (eg: \$8,300,000)
Exclusions	List the exclusion items and approximate value of the exclusion that you will be seeking to negotiate with the contracting agency. For example: <ul style="list-style-type: none">• Lease of land adjacent to project site: \$80,000• Hire of construction machinery: \$50,000
Project value	The project value is the contract value minus the proposed exclusions. For example: \$8,300,000 - \$130,000 = \$8,170,000 (project value).

Aboriginal participation percentage	This will be a minimum of 1.5% of the project value or project workforce. The contracting agency may require a higher percentage of participation.
Value of Aboriginal participation	1.5% of the project value (or higher per contracting agency requirements) – eg, \$8,170,000 x 1.5% = \$122,550
<p>Plan to meet Aboriginal participation requirements (if you are an Aboriginal business, you do not have to proceed further on this form).</p> <p>Aboriginal participation requirements may be met in three ways:</p> <ul style="list-style-type: none"> • A minimum 1.5% of project value directed toward Aboriginal businesses through sub-contracting • A minimum 1.5% of the project workforce to be Aboriginal people across the life of the project • A minimum 1.5% of the project value directed toward capability and capacity building of Aboriginal people or businesses • Or, a combination of these options. 	
Subcontracting	<p>If you are sub-contracting all or part of the Aboriginal participation requirement, your plan should include the following:</p> <ul style="list-style-type: none"> • The portion of Aboriginal participation that will be directed to Aboriginal businesses through sub-contracting. • Clearly identify opportunities for Aboriginal businesses in your supply chain. • Methods for identifying Aboriginal businesses and clear communicating opportunities. • You could include identifying Aboriginal businesses that your organisation will sub-contract in the delivery of the project. • You could demonstrate an existing relationship with local stakeholder groups such as Local Aboriginal Land Councils or commit to develop a work relationship with specified stakeholders by a certain date if successful.
Employment	<p>Total estimated project workforce (FTE):</p> <p>Estimated Aboriginal FTE: eg, total workforce x 1.5% (or percentage agreed).</p> <p>Your plan should include:</p> <ul style="list-style-type: none"> • Clearly identified roles for Aboriginal employees and the skills required for these roles. Where possible, the majority of the roles should be central to the goods/services being delivered and located with local communities. • Identify ways to source suitable Aboriginal candidates, for example, through collaboration with employment service providers, consulting with Local Aboriginal Land Councils or local Aboriginal community controlled organisations, advertising through Aboriginal owned media outlets or hosting community information sessions.
Education, training or capability building for Aboriginal staff or businesses	<p>If you are directing some or all of the Aboriginal participation requirement to education, training or capability building for Aboriginal staff or businesses, your plan should include:</p> <ul style="list-style-type: none"> • The portion of the Aboriginal participation requirement that will be directed in this manner.

	<ul style="list-style-type: none"> • Ways that you plan to retain and train Aboriginal employees for the role and ongoing development, for example, a mentoring or professional development program for Aboriginal employees, commitment to building cultural capability within the workplace which may include training of existing staff or working with Reconciliation Australia to agree a Reconciliation Action Plan. • Courses or costs you plan to support for Aboriginal employees. • Ways that you plan to build capability for Aboriginal businesses that are contributing directly to the project. For example, supplier diversity programs, business mentoring programs, assessing local Aboriginal business capability.
--	---

Past Aboriginal participation compliance history

<p>Please indicate whether your business is currently, or has previously been, subject to Aboriginal participation requirements on a NSW Government project and if so, please indicate how it has performed against its commitments.</p>	<p>If your business is currently or has previously been subject to Aboriginal participation requirements, please advise the project, contracting agency, participation requirements and the businesses performance against the requirements (were the commitments met? If not, why not etc).</p> <p>If your business has no experience with Aboriginal participation requirements, evidence can be provided of your businesses commitment to Aboriginal employment or use of Aboriginal suppliers through:</p> <ul style="list-style-type: none"> • Previous track record of Aboriginal employment and use of Aboriginal suppliers, including by providing examples or case studies. • A Reconciliation Action Plan (RAP) or similar that provides a business commitment to Aboriginal employment and Aboriginal supplier targets.
--	--

SCHEDULE 23

Declaration of Compliance

(Clause 40)

SUBCONTRACTOR'S DECLARATION OF COMPLIANCE WITH THE CODE FOR THE TENDERING AND PERFORMANCE OF BUILDING WORK 2016

1.1.1. In this Declaration of Compliance:

ABCC	means the body referred to in subsection 29(2) of the Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
Act	means the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> .
Building Code	means the <i>Code for the Tendering and Performance of Building Work 2016</i> , which is available at https://www.legislation.gov.au/Details/F2016L01859 .
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Enterprise Agreement	has the same meaning as in the <i>Fair Work Act 2009</i> .
Exclusion Sanction	has the same meaning as in subsection 3(1) of the Building Code.
Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Works	means the Commonwealth Funded Building Work that is the subject of this Subcontract.

Name of Commonwealth project:	
Name of Subcontract:	
Name of [Subcontractor/Consultant], ABN and ACN:	

- 1.1.2. The [Subcontractor/Consultant] confirms that it has complied with the Building Code in preparing its [response/tender].
- 1.1.3. The [Subcontractor/Consultant] acknowledges that it and its Related Entities must comply with the Building Code in relation to all Building Work described in Schedule 1 of the Building Code for which an expression of interest or request for tender (however described) is called on or after the date that the Building Code commenced, being 2 December 2016, and, should it be the successful Tenderer, in relation to the Works.
- 1.1.4. The [Subcontractor/Consultant] undertakes to ensure that it and its subcontractors that it subcontracts any of the Works to, should it be the successful Tenderer, comply with the Building Code.
- 1.1.5. The [Subcontractor/Consultant] acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and undertakes to ensure that it and its subcontractors will comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- 1.1.6. The [Subcontractor/Consultant] declares that where it proposes to subcontract any of the Works, should it be the successful Tenderer, it will:
- a. not enter into a subcontract with a subcontractor who:
 - i. is covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - ii. is subject to an Exclusion Sanction;
 - iii. has had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order; or
 - iv. unless approved otherwise by the ABC Commissioner, is excluded from performing Building Work funded by a state or territory government; and
 - b. only enter into a subcontract where:
 - i. the subcontractor undertakes to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - ii. the subcontractor undertakes to comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works;
 - iii. the subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and

- iv. the subcontract with the subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.

1.1.7. The [Subcontractor/Consultant] declares that it has provided all of the further information required by Attachment A to this Declaration of Compliance.

1.1.8. The [Subcontractor/Consultant] declares that:

- a. it is not covered by an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
- b. it is not subject to an Exclusion Sanction;
- c. it has not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
- d. it will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia, should it be the successful Tenderer; and
- e. it has provided as part of its tender a Workplace Relations Management Plan for approval by the ABCC in accordance with Part 6 of the Building Code.

[To be signed by the [Subcontractor/Consultant]—insert appropriate signature block.]

**ATTACHMENT A – INFORMATION REGARDING COMPLIANCE WITH THE
CODE FOR THE TENDERING AND PERFORMANCE OF BUILDING WORK
2016**

[Subcontractors/Consultants] must provide the following information as part of their Declaration of Compliance. This information can either be set out in this table or in an annexure to this Attachment and the Declaration of Compliance.

Item	Requirement	Compliance
1	Does the [Subcontractor/Consultant] have an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code?	<p>Yes / No</p> <hr/> <p>Details (attach a copy of the letter of compliance or declaration of eligibility if the Tenderer is awaiting a letter of compliance and is not covered by an Enterprise Agreement made on or after 2 December 2016):</p>
2	Is the [Subcontractor/Consultant] excluded from performing Building Work funded by a state or territory government? If so, the Commonwealth reserves the right to exclude the [Subcontractor/Consultant] from further consideration.	<p>Yes/No</p> <hr/> <p>Details:</p>
3	Does the [Subcontractor/Consultant] positively commit to the provision of appropriate training and skills development for their workforce, and, if so, what evidence can the [Subcontractor/Consultant] supply in relation to this (for example, evidence of its compliance with any state or territory government building training policies and evidence of its support in the delivery of nationally endorsed building and construction competencies)?	<p>Yes/No</p> <hr/> <p>Details:</p>
4	How many current apprentice and trainee employees are engaged or intended to be engaged by the [Subcontractor/Consultant] to undertake the Works?	<p>Details:</p>

5	How many and what classes of persons that hold visas under the <i>Migration Act 1958</i> are engaged or intended to be engaged by the [Subcontractor/Consultant] to undertake the Works?	Details:
6	Has the [Subcontractor/Consultant] within the preceding 3 years had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the <i>Migration Act 1958</i> ?	Yes / No
		Details:
7	Has the [Subcontractor/Consultant] or its Related Entities within the preceding 3 years been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant?	Yes / No
		Details:
8	Has the [Subcontractor/Consultant] or its Related Entities within the preceding 3 years owed any unsatisfied judgment debts to a Building Contractor or Building Industry Participant?	Yes / No
		Details:
9	To what extent does the [Subcontractor/Consultant] intend to use domestically sourced and manufactured building materials to undertake the Works?	Details:
10	What is the [Subcontractor/Consultant] assessment of the whole-of-life costs of the project to which the Works relate?	Details:
11	What does the [Subcontractor/Consultant] consider the impact on jobs will be of the project to which the Works relate?	Details:

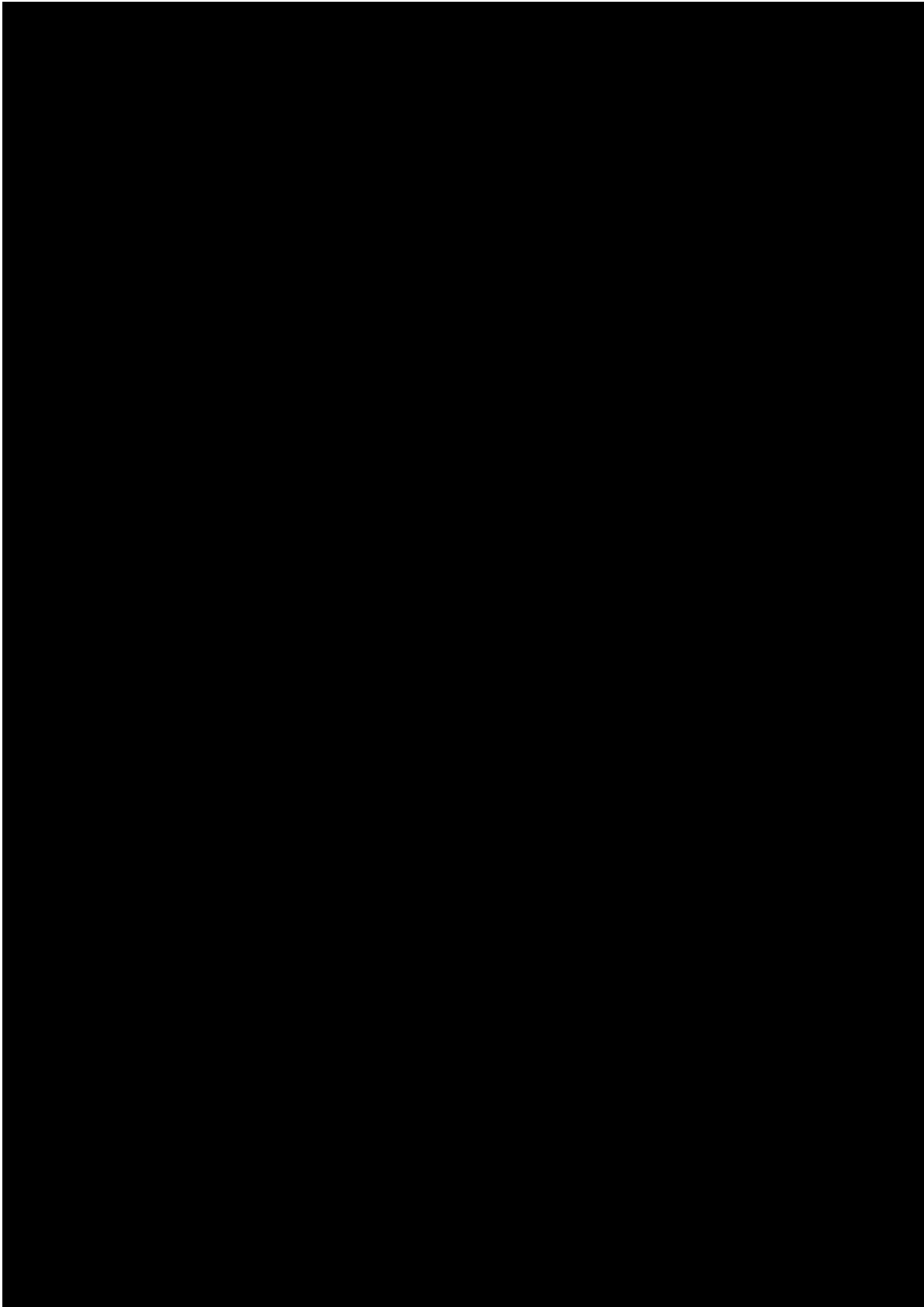
12	Does the [Subcontractor/Consultant] consider that the project to which the Works relate will contribute to skills growth?	Yes/No
----	---	--------

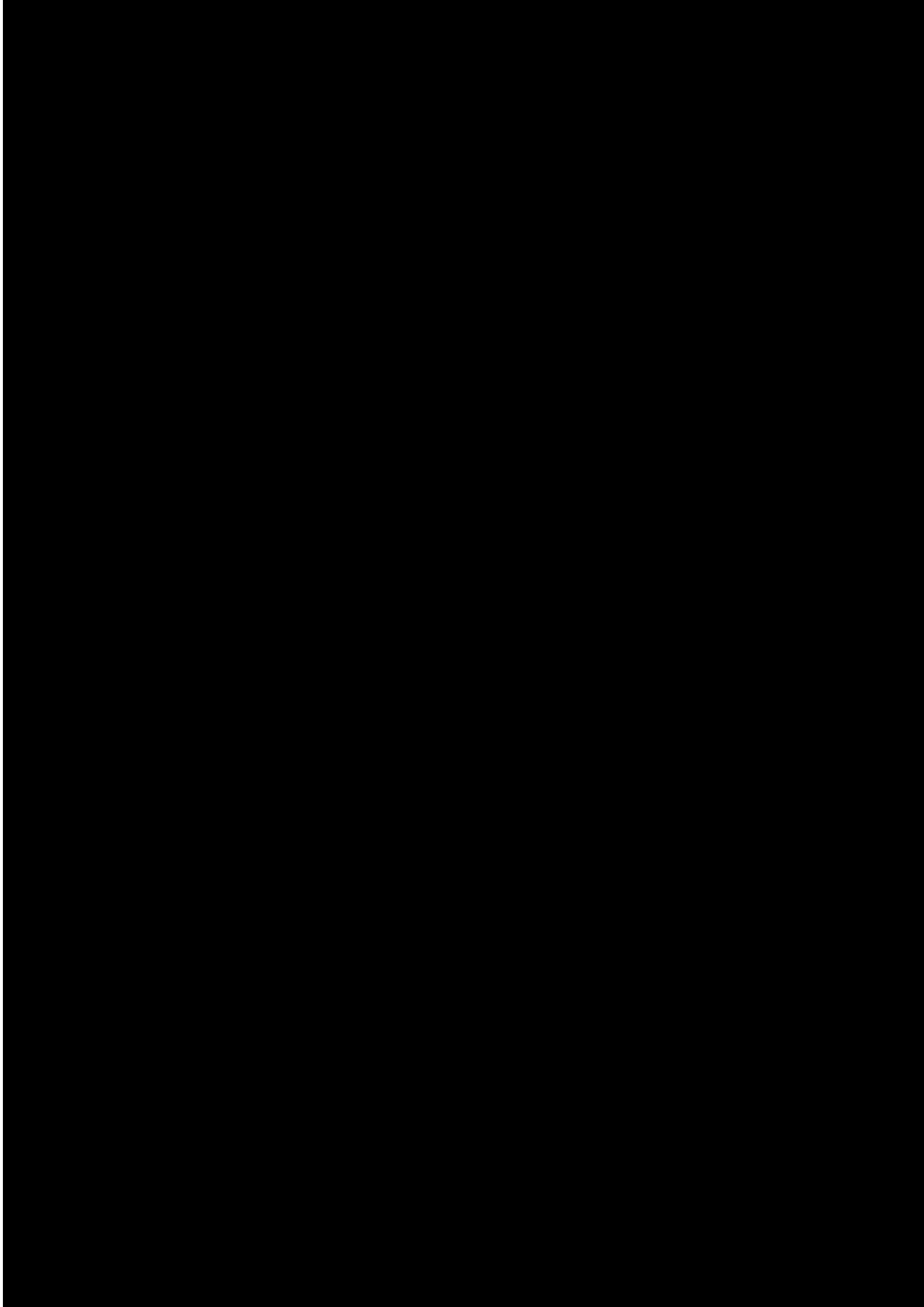
PART D - FINANCIAL

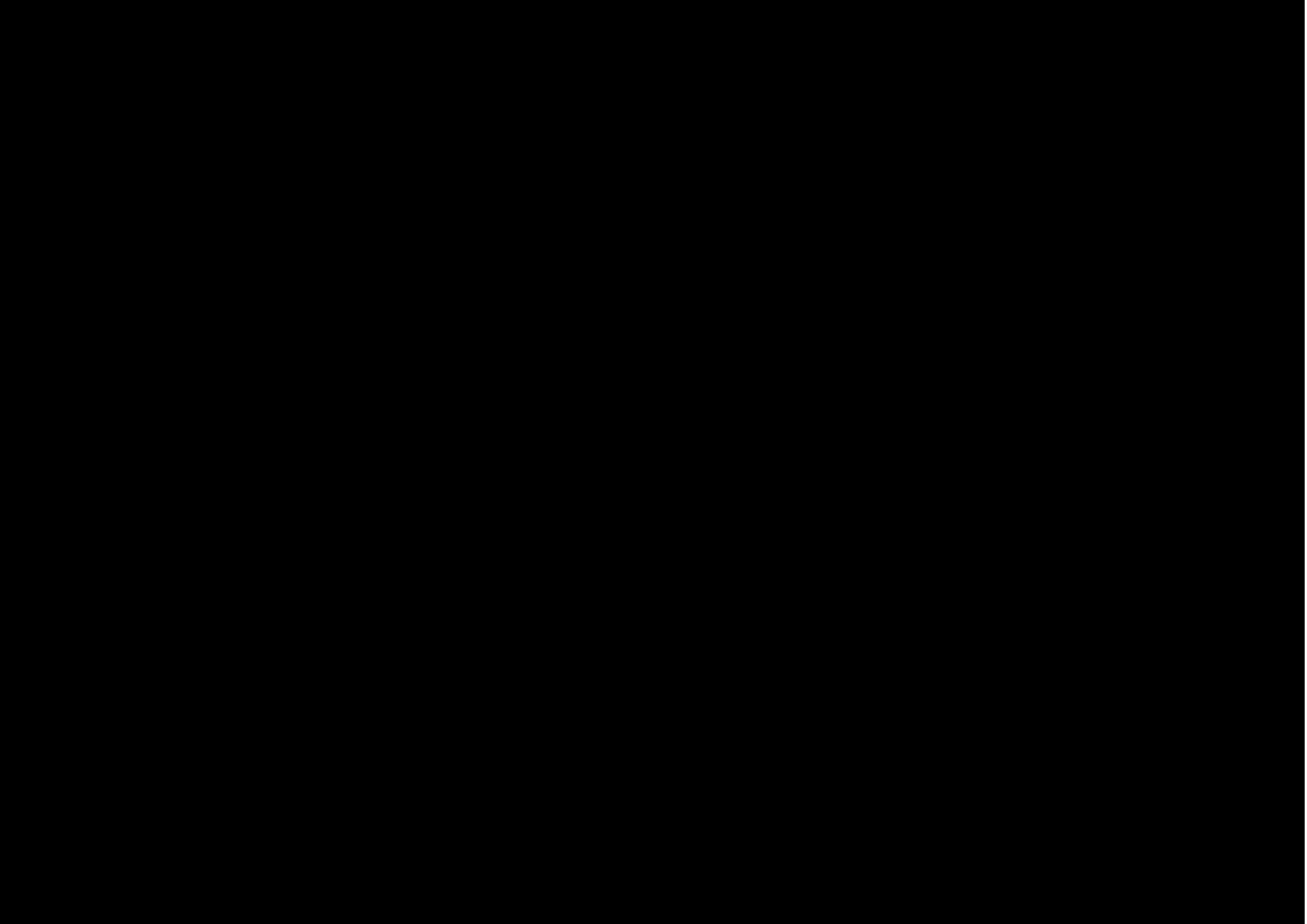
SCHEDULE 24
Payment Mechanism

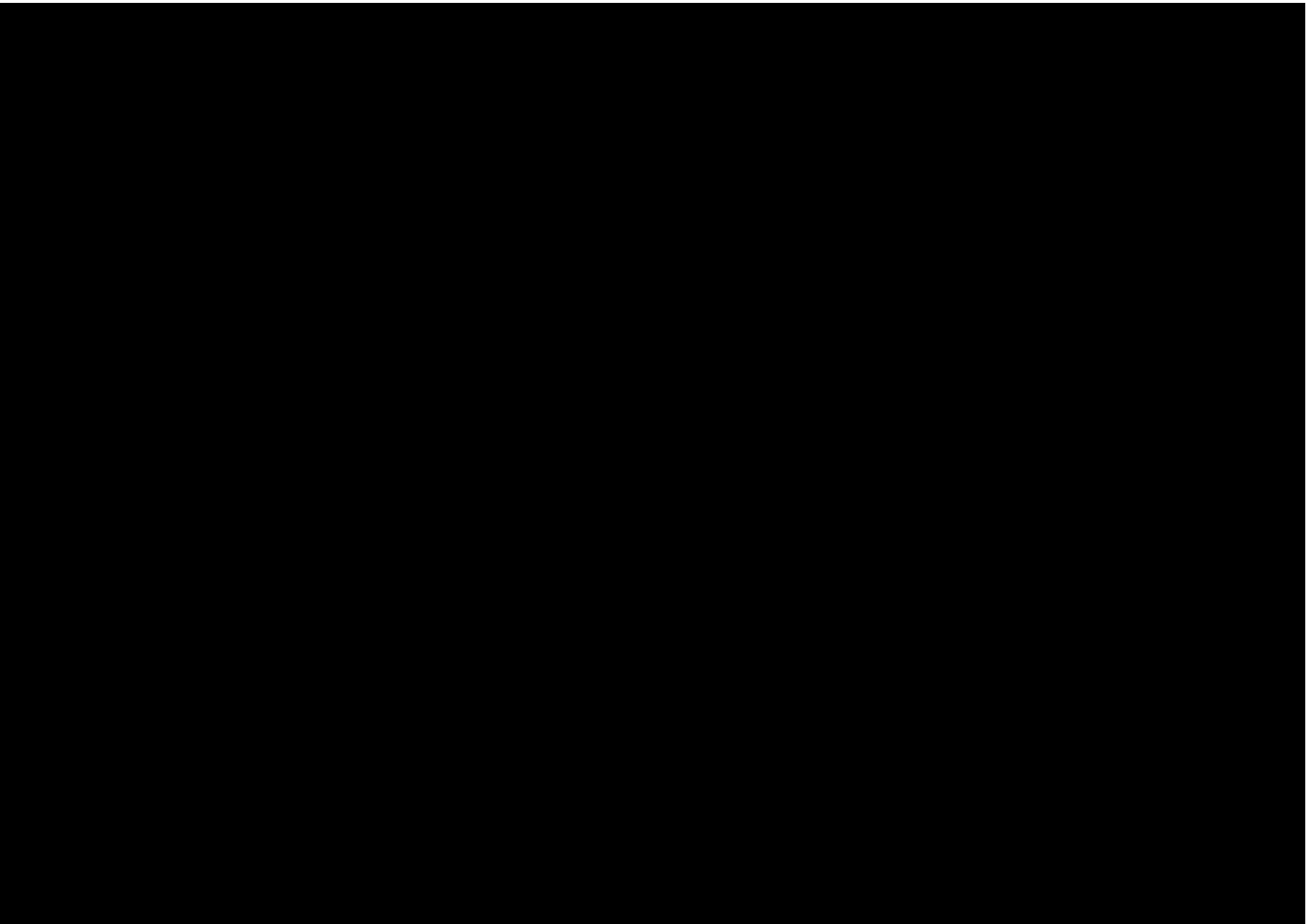
SCHEDULE 24

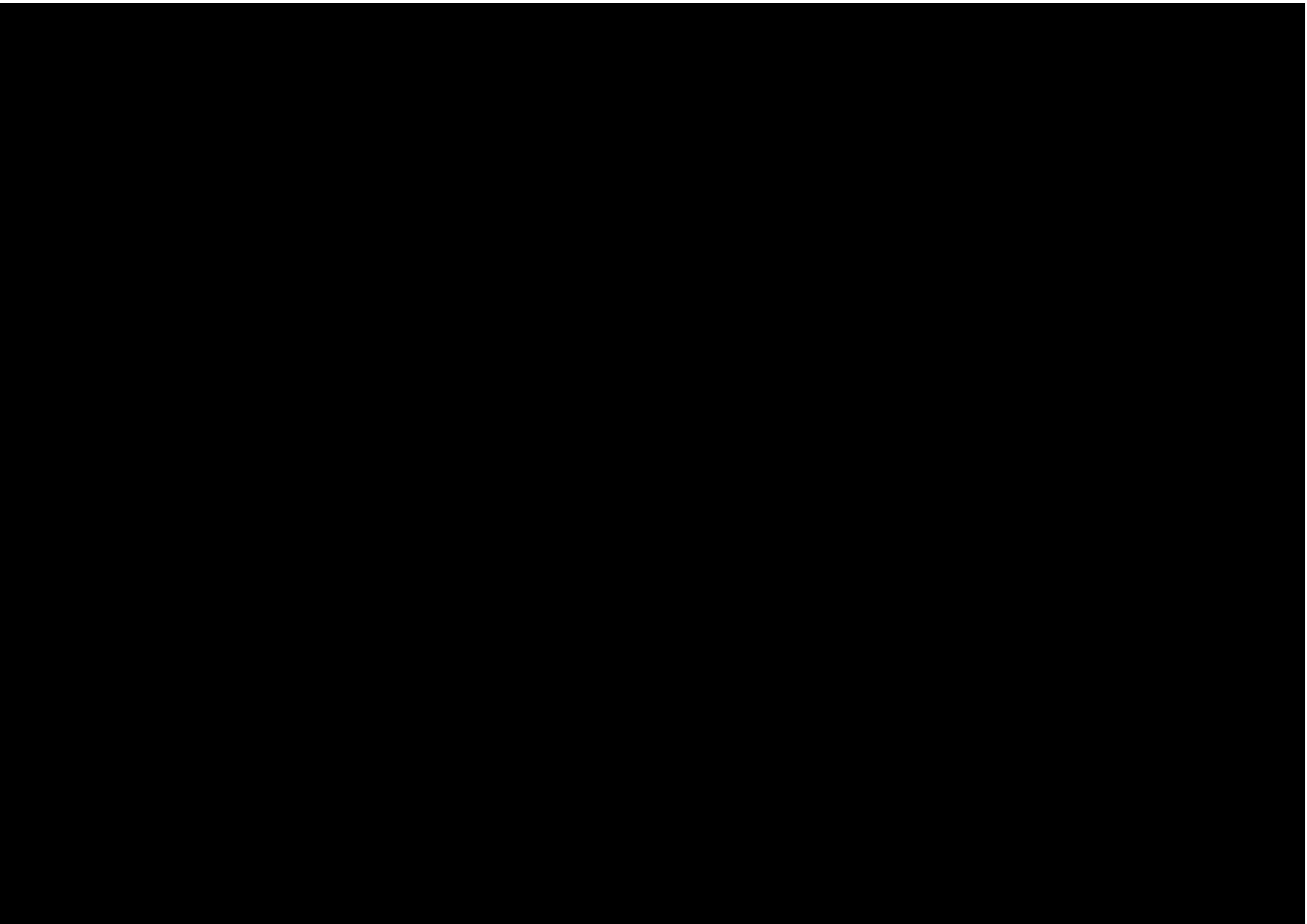
Payment Mechanism

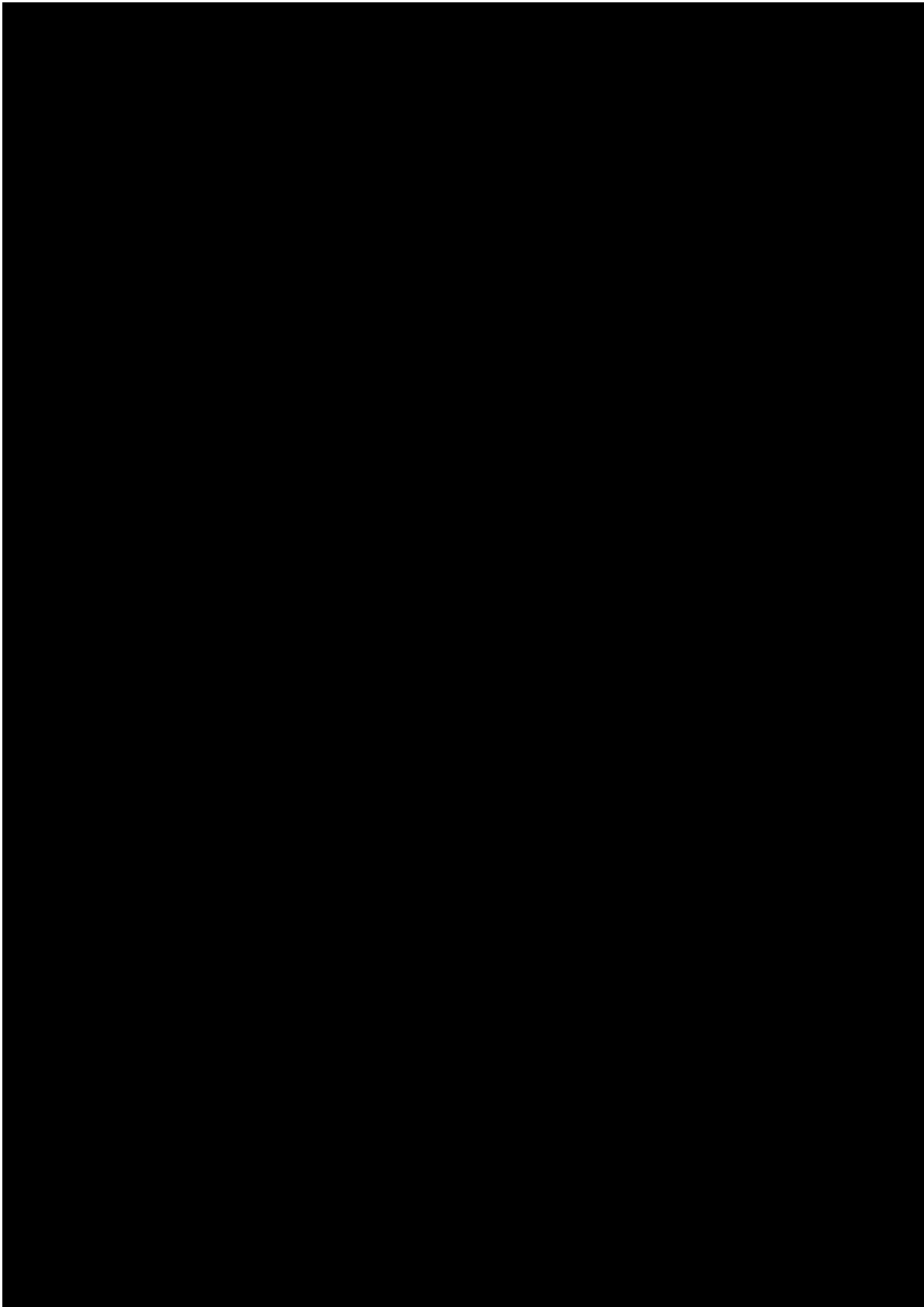


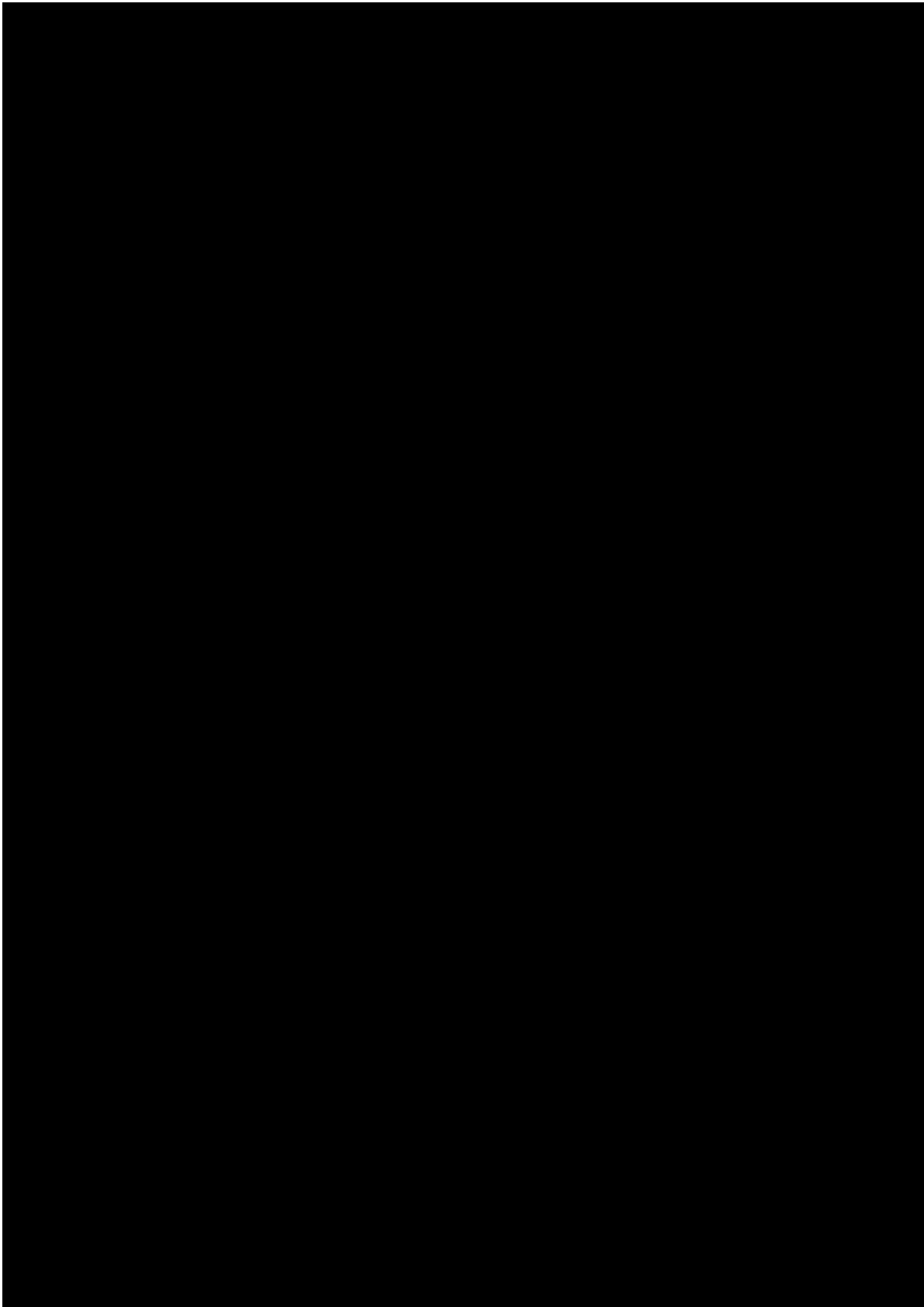


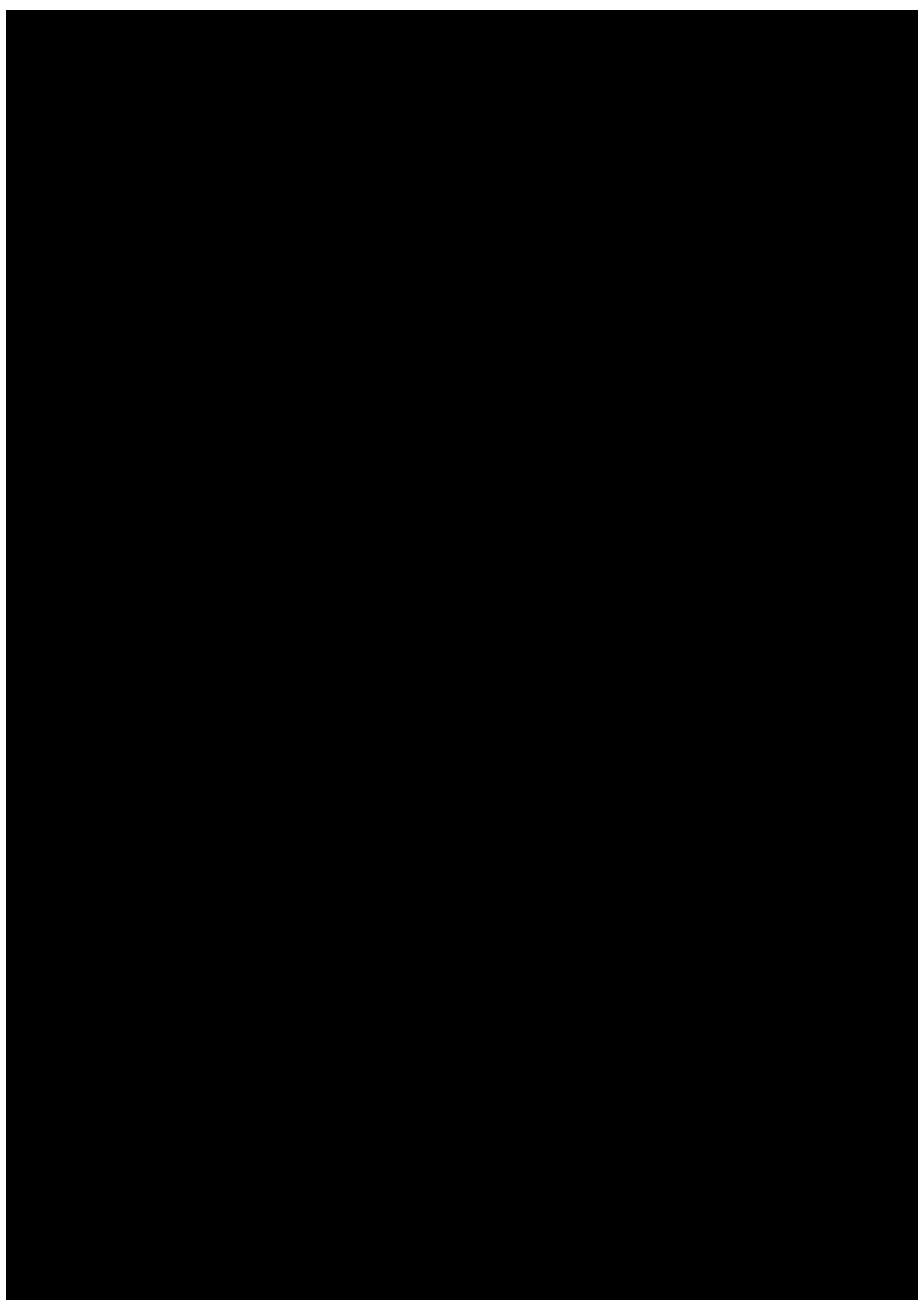












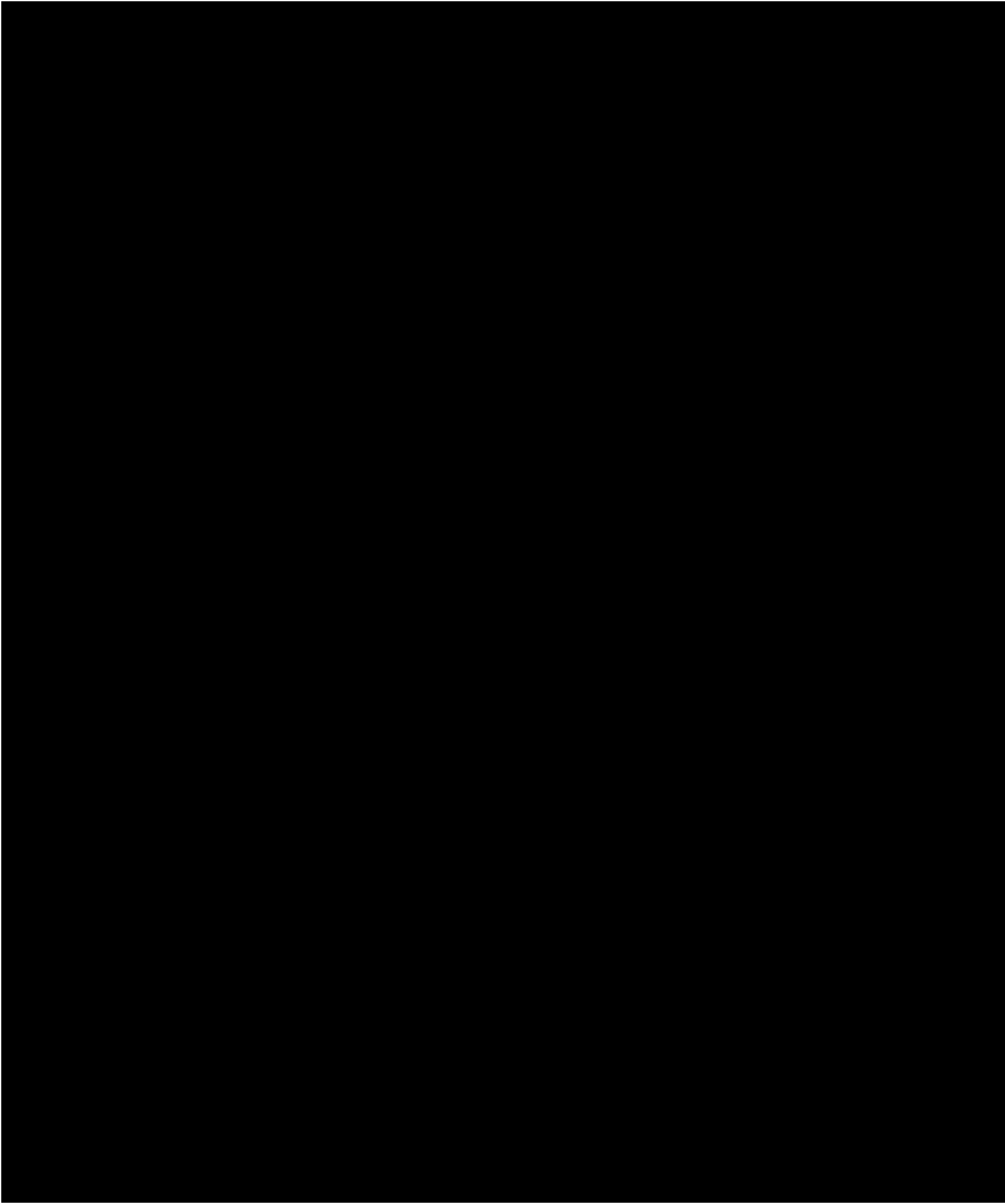
SCHEDULE 25

Power Usage Adjustment

SCHEDULE 26

Insurances

(Clause 25.5)



SCHEDULE 27

Form of Unconditional Undertaking

(Clause 10)

Part 1

THIS DEED POLL (Undertaking) made the day of 20

IN FAVOUR OF: Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (**Principal**)

GIVEN BY: *[insert]* (**Financial Institution**)

Asset Manager: *[insert]* ABN *[insert]*

Security Amount: \$*[insert]*

The Contract: The asset management contract between the Principal and the Asset Manager

Contract Title: [Western Harbour Tunnel and Sydney Harbour Tunnel - Asset Management Deed]

Other words and phrases in this Undertaking have the meanings given in the Contract.

Undertaking

1. At the request of the Asset Manager, and in consideration of the Principal 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 the Principal to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, upon receipt from the Principal of a notice in writing (accompanied by this Undertaking) purportedly signed by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Asset Manager and despite any notice from the Asset Manager not to pay.
3. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This Undertaking continues until one of the following occurs:
 - (a) the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - (b) this Undertaking is returned to the Financial Institution;
 - (c) the Financial Institution pays the Principal an amount which, in aggregate with all other amounts previously paid by the Financial Institution under this Undertaking, equals the Security Amount, or as much as the Principal may require overall; or

(d) [**Drafting note: expiry date of Security Bond to be inserted**].

5. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking, and the liability of the Financial Institution will then immediately end.
6. Payments made under this Undertaking will be made electronically to a bank account of the Principal only. The Security Amount will be automatically reduced by the amount paid.
7. This Undertaking is governed by the laws of the State of New South Wales.

SIGNED as a deed poll.

SIGNED, SEALED and **DELIVERED** for and on behalf of [**insert name of Financial Institution**] by its attorney under a power of attorney dated [**insert**], and the attorney declares that the attorney has not received any notice of the revocation of such power of attorney, in the presence of:

Signature of attorney

Signature of witness

Name of Attorney in full

Name of witness in full

SCHEDULE 28

Form of AM Guarantee

(Clause 10.1)

SCHEDULE 29

NSW Subcontractor's Statements

(Clause 20.3(b))

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 – 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 Relations 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.

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 30

NSW Supporting Statement

(Clause 20.3(b))

SUPPORTING STATEMENT

REGARDING PAYMENT TO SUBCONTRACTORS

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

*Head contractor: [*business name of head contractor*] ABN [*insert ABN*] has entered into a contract with [*business name of subcontractor*] ABN [*insert ABN*], contract number/identifier [*insert*].

OR

*Head contractor [*business name of head contractor*] ABN [*insert ABN*] has entered into a contract with the subcontractors listed in the attachment to this statement.

*[delete whichever of the above does not apply]

This statement applies for work between [*start date*] and [*end date*] inclusive (the construction work concerned), subject of the payment claim dated [*date*].

I, [*full name*] being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: _____

Date: _____

Full Name: _____

Position/Title: _____

(a) Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

(b) Notes for Supporting Statement

Offences for False Statement

In terms of section 13(8) of the *Building and Construction Security of Payment Act 1999*, a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

SCHEDULE 31

Asset Renewal Reserve Fund

(Clauses 1.1 and 20.13(a)(ii))

1. ASSET RENEWAL RESERVE AMOUNT

- (a) On or before the first Business Day of each Month listed in the table below until the Expiry Date or earlier termination of this deed, the Principal will deposit into the Asset Renewal Reserve Fund the amount specified as the "Asset Renewal Reserve Amount" in the table below (subject to Indexation) for the relevant Month.

Year	Month	Asset Renewal Reserve Amount (ex GST) (\$ Real, Dec-21)

Year	Month	Asset Renewal Reserve Amount (ex GST) (\$ Real, Dec-21)
[Redacted]		

Year	Month	Asset Renewal Reserve Amount (ex GST) (\$ Real, Dec-21)

Year	Month	Asset Renewal Reserve Amount (ex GST) (\$ Real, Dec-21)

Year	Month	Asset Renewal Reserve Amount (ex GST) (\$ Real, Dec-21)

- (b) The profile of Asset Renewal Reserve Amounts specified in the table above will only be subject to adjustment as a result of:
- (i) a Change Order issued by the Principal under section 5(f) of Schedule 3 (Change Procedure) in respect of Parameterised Changes;
 - (ii) a Change Order issued by the Principal in respect of Deficient SHT Asset Works in accordance with clause 18.17(g);
 - (iii) a Change Order issued by the Principal under Schedule 3 (Change Procedure) which expressly adjusts the Asset Renewal Reserve Amounts; or
 - (iv) a delay to the anticipated Date of WHT Opening Completion, as notified by the Principal to the Asset Manager in accordance with clause 16.2(b).

2. **CALCULATION OF ASSET RENEWAL RESERVE AMOUNTS**

- (a) Following the occurrence of any event listed in section 1(b), the revised Asset Renewal Reserve Amount for each Quarter (**ARR Amount (Qn)**) will be determined in accordance with the following formula:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Residual Asset Life Amortisation Period (Refurbishment) or RALAP-RF(a)(Qn) means, in respect of each RLA Asset (a) and each Quarter (Qn):

- (a) prior to the first forecast MRR Works (Refurbishment):
 - (i) for RLA Assets in the SHT Motorway, the number of Quarters from the SHT Handover Date until the first forecast MRR Works (Refurbishment) scheduled in the relevant Initial Forecast Major Repair and Replacement Plan (if applicable); or
 - (ii) for RLA Assets in the WHT Motorway, the number of Quarters from the Date of WHT Opening Completion until the first forecast MRR Works (Refurbishment) scheduled in the relevant Initial Forecast Major Repair and Replacement Plan; or
- (b) after the first forecast MRR Works (Refurbishment), the number of Quarters between the most recent forecast MRR Works (Refurbishment) prior to the Quarter (Qn) and the next forecast MRR Works (Refurbishment), each as scheduled in the relevant Initial Forecast Major Repair and Replacement Plan.

Residual Asset Life Amortisation Period (End of Life) or RALAP-EL(a)(Qn) means, in respect of each RLA Asset (a) and each Quarter (Qn):

- (a) prior to the first forecast MRR Works (End of Life):
 - (i) for RLA Assets in the SHT Motorway, the number of Quarters from the SHT Handover Date until the first forecast MRR Works (End of Life) scheduled in the relevant Initial Forecast Major Repair and Replacement Plan (if applicable); or
 - (ii) for RLA Assets in the WHT Motorway, the number of Quarters from the Date of WHT Opening Completion until the first forecast MRR Works (End of Life) scheduled in the relevant Initial Forecast Major Repair and Replacement Plan; or
- (b) after the first forecast MRR Works (End of Life), the number of Quarters between the most recent forecast MRR Works (End of Life) prior to the Quarter (Qn) and the next forecast MRR Works (End of Life), each as scheduled in the relevant Initial Forecast Major Repair and Replacement Plan.

- (b) The revised Asset Renewal Reserve Amount for each Month will be calculated by dividing the relevant ARR Amount (Qn), as determined in accordance with paragraph (a), by three.

- (c) A worked example of the calculation of ARR Amount (Qn) in paragraph (a) above is included in Schedule 36 (Electronic Files) as an electronic file.

3. **DRAWDOWN CAPS**

- (a) The Drawdown Cap in respect of each Contract Period, as specified in the table below (subject to Indexation), is a fixed amount equal to the aggregate Major Repair and Replacement Price for all Major Repair and Replacement Works scheduled to be carried out in that Contract Period as detailed in the Initial Forecast Major Repair and Replacement Plans.

Contract Period	Drawdown Cap (ex GST) (\$ Real, Dec-21)
Contract Period 1	
Contract Period 2	
Contract Period 3	

- (b) The Drawdown Caps for each Contract Period specified in the table above will only be subject to adjustment as a result of:

- (i) a Change Order issued by the Principal:
- (A) under section 5(f) of Schedule 3 (Change Procedure) in respect of Parameterised Changes;
 - (B) in respect of Deficient SHT Asset Works in accordance with clause 18.17(g); or
 - (C) under Schedule 3 (Change Procedure) which requires changes to the scope and/or timing of any Major Repair and Replacement Works; or
- (ii) a delay to the anticipated Date of WHT Opening Completion, as notified by the Principal to the Asset Manager in accordance with clause 16.2(b),

which results in any Major Repair and Replacement Works scheduled to be carried out in one Contract Period being rescheduled for an earlier Contract Period. In these circumstances, the Drawdown Cap in respect of each affected Contract Period will be adjusted to reflect the aggregate Major Repair and Replacement Price for all Major Repair and Replacement Works scheduled to be carried out in that Contract Period in the relevant Forecast Major Repair and Replacement Plan, as amended.

SCHEDULE 32

Net Residual Asset Life Adjustment

PART E – TECHNICAL

SCHEDULE 33
AM Services Specification

THIS PAGE LEFT INTENTIONALLY BLANK

Asset Manager Services Specification

OFFICIAL: Sensitive – NSW Government

Document Number: 21.0000139213.0429

Request for Tender Version

CONTENTS

1.	Introduction	1
1.1.	Background	1
1.1.1.	Sydney Harbour Tunnel	1
1.1.2.	Domain Tunnel	1
1.1.3.	Western Harbour Tunnel	1
1.2.	Purpose of this Document	2
1.3.	Document Context	2
1.4.	Structure	3
1.5.	Asset Management Services Phases	3
1.6.	Interpretation	4
1.7.	Glossary of Terms, Definitions and Abbreviations	6
2.	General	14
3.	Not Used	15
4.	Interaction with WHT Delivery Team	15
5.	WHT Procurement Phase Services	15
5.1.	Summary of Procurement Phase Services	15
5.2.	WHT SWTC Development Support	16
5.3.	WHT Main Works Tender Activity Support	17
5.3.1.	General	17
5.3.2.	Interactive Session Support, Clarifications and Departures	17
5.3.3.	Whole of Life Assessment	17
5.3.4.	Design Assessment	18
5.3.5.	Delivery Strategy Assessment	18
5.4.	LCC Model Support	19
5.5.	Key Competencies	20
6.	WHT Delivery Phase Services	20
6.1.	Summary of Delivery Phase Services	20
6.2.	WHT Design Review Support	22
6.2.1.	General	22
6.2.2.	Design Reviews	22
6.2.3.	Meetings and Workshops	23
6.3.	Whole of Life Assessment	23
6.4.	WHT Acceptance Testing and Commissioning	24
6.5.	Inspections and Audits	24
6.5.1.	Functional Configuration Audit	24
6.5.2.	Physical Configuration Audit	24
6.5.3.	Asset Inspections	25

OFFICIAL

6.6.	Strategies, Plans and Procedures	25
6.6.1.	WHT Motorway Emergency Response Strategy.....	25
6.6.2.	WHT Motorway Traffic Management Strategy.....	26
6.6.3.	Review of Main Works Contractor Deliverables.....	26
6.6.4.	Other Plans & Procedures	27
6.7.	Asset Information Model	27
6.8.	WHT Operational Readiness	27
6.8.1.	General.....	27
6.8.2.	Training.....	28
6.8.3.	Stakeholder Engagement	28
6.8.4.	Emergency Services Exercises	29
6.8.5.	Business Continuity & Disaster Recovery.....	29
6.9.	Initial Spares	29
6.10.	Key Competencies	29
7.	Mobilisation Phase.....	30
7.1.	General	30
7.2.	Plans and Procedures.....	31
7.2.1.	SHT Mobilisation Plan [Not to be Used].....	31
7.2.2.	SHT Transition Plan.....	31
7.2.3.	WHT Mobilisation Plan	31
7.2.4.	Review and Update of SHT Plans & Procedures.....	31
7.3.	Training and Competency.....	31
7.3.1.	Training Management Plans.....	31
7.3.2.	SHT Training.....	31
7.3.3.	WHT Training.....	31
7.4.	Engineering and Asset Information.....	32
7.4.1.	SHT Digital Engineering and Asset Information.....	32
7.4.2.	WHT Digital Engineering and Asset Information.....	33
8.	Operations and Maintenance Services.....	33
8.1.	Summary of Operations and Maintenance Services	33
8.2.	Exclusions	33
8.2.1.	Domain Tunnel	33
8.2.2.	Sydney Harbour Tunnel.....	34
8.2.3.	Western Harbour Tunnel	34
8.2.4.	Incident Response Services	34
8.3.	Key Obligations	35
8.4.	Management Systems	35
8.4.1.	Integrated Contract Management System	35
8.4.2.	Work Health and Safety Management System	35
8.4.3.	Quality Management System.....	36

8.4.4.	Environmental Management System	36
8.4.5.	Not Used.....	36
8.4.6.	Compliance.....	36
8.4.7.	Reporting & Notification	37
8.4.8.	Records Management	37
8.5.	Operations.....	37
8.5.1.	Control Room Operations	37
8.5.2.	Minimum Operating Equipment	38
8.5.3.	Incident Detection, Response, Clearance and Recovery.....	38
8.5.4.	Engagement with Adjacent Motorways and Road Networks	43
8.5.5.	Emergency and Threat Management	45
8.5.6.	Emergency Services.....	45
8.5.7.	Environment and Sustainability.....	45
8.5.8.	Road Safety Audits	47
8.5.9.	Traffic Control Plans	47
8.5.10.	Road Occupancy Licensing	48
8.5.11.	Not Used.....	48
8.5.12.	Works Planning, Coordination and Approval	48
8.5.13.	Key Competencies and Nominated Personnel	49
8.6.	Maintenance.....	50
8.6.1.	General.....	50
8.6.2.	Preventive Maintenance	51
8.6.3.	Inspections.....	52
8.6.4.	Condition Monitoring.....	53
8.6.5.	Corrective Maintenance.....	53
8.6.6.	Spares Management & Replenishment	55
8.6.7.	Operations and Maintenance Manual Requirements.....	56
8.6.8.	Utility Service, Authority and Third Party Works	57
8.6.9.	Air Quality Monitoring Equipment	57
8.6.10.	Workforce Skills, Diversity and Industry Participation	57
8.6.11.	Subcontractor Qualifications and Credentials.....	58
8.6.12.	Not Used.....	58
8.6.13.	Key Competencies and Nominated Personnel	58
8.7.	Building Management Services	58
8.7.1.	General.....	58
8.7.2.	Motorways Control Centre	58
8.7.3.	Disaster Recovery Site	59
8.8.	Cyber Security	60
8.8.1.	Cyber Security Planning & Management.....	60
8.8.2.	Audits and Testing.....	60
8.9.	Business Continuity and Disaster Recovery.....	60

OFFICIAL

8.9.1.	Plans.....	60
8.9.2.	Periodic Tests.....	61
8.10.	Community Relations and Stakeholder Management	61
8.10.1.	Community Relations.....	61
8.10.2.	Not Used.....	61
9.	Asset Management Services	61
9.1.	Summary of Asset Management Services.....	61
9.2.	Asset Management Plans	62
9.3.	Technical Maintenance Plans (Code of Maintenance Standards).....	62
9.4.	Major Repair and Replacement	62
9.4.1.	Major Repair and Replacement Expenditure Forecast	62
9.4.2.	Major Repair and Replacement Accountability	63
9.4.3.	Exclusions	63
9.5.	Engineering Management.....	65
9.5.1.	Authorised Engineering Organisation	65
9.5.2.	Engineering Decisions	65
9.5.3.	Configuration Management	65
9.5.4.	Reporting of Engineering Decisions and Configuration Changes	66
9.6.	Not Used	66
9.7.	Asset Improvement	66
9.7.1.	Innovation and Improvement Proposals	66
10.	Asset Information and Artefacts.....	67
10.1.	Engineering and Asset Information Artefacts	67
10.1.1.	WHT Engineering and Asset Information Artefacts.....	67
10.1.2.	SHT Engineering and Asset Information Artefacts.....	67
10.1.3.	System Faults and Equipment Alarms.....	67
10.2.	Asset Information System	68
10.2.1.	AIS Requirements.....	68
10.2.2.	AIS Management.....	68
10.2.3.	TfNSW Access to Asset Information System and Data During Term.....	68
10.3.	Periodic Asset Condition Assessment	69
11.	Handover.....	70
11.1.	Summary of Handover Services	70
11.2.	Handover Asset Condition Inspection and Report.....	71
11.3.	Handover Condition	71
11.4.	Engineering and Asset Information.....	72
11.5.	Asset Information System	72
12.	Sydney Harbour Tunnel Motorway and Domain Tunnel Refurbishment	73
12.1.	SHT Tunnel Administration and Control Centre	73

12.1.1.	General.....	73
12.1.2.	Exterior.....	73
12.1.3.	Control Room & Computer Rooms.....	73
12.1.4.	Emergency Management Room.....	73
12.1.5.	Office Facilities.....	73
12.2.	Domain Tunnel.....	74
12.3.	Other Facilities.....	74
13.	Motorway Control Centre Transition.....	74
13.1.	General.....	74
13.2.	MCC and DRS Fit Out.....	75
13.3.	SHT OMCS.....	75
14.	Toll Collection System.....	75
15.	AM Services Plans.....	76
16.	Key Contracts.....	76
16.1.	General.....	76
16.2.	Incident Response Services.....	76
16.3.	Electricity Procurement.....	76
16.4.	Utilities.....	77
16.5.	Sydney Harbour Tunnel CCCS Technical Services.....	77
17.	Level of Performance.....	77
17.1.	Motorway Incident Detection, Response and Clearance.....	77
17.1.1.	Motorway Incident Response.....	77
17.1.2.	Motorway Incident Clearance.....	77
17.2.	Motorway Availability.....	78
17.2.1.	Not Used.....	78
17.2.2.	Not Used.....	78
17.2.3.	Unplanned Maintenance Closures.....	78
17.3.	Asset Integrity & Asset Management.....	78
17.4.	Environment & Sustainability.....	78
17.5.	Toll Collection Enabling Infrastructure.....	78
17.6.	Other.....	79
Appendix A	Plans and Procedure Requirements.....	80
Appendix B	Reporting and Notification Requirements.....	150
Appendix C	Traffic and Transport Management.....	162
Appendix D	Community Relations.....	169
Appendix E	Sustainability.....	173
Appendix F	Asset Information System Requirements.....	178
Appendix G	Not Used.....	180
Appendix H	Design Review Guidance.....	181

Appendix I	Integrated Contract Management System	182
Appendix J	Road Occupancy Licence	185
Appendix K	Minimum Maintenance and Asset Condition Requirements	195
Appendix L	Codes and Standards	216
Appendix M	Domain Tunnel Controlled Devices	218
Appendix N	Ground and Infrastructure Monitoring	219
Appendix O	Residual Life Assessed Assets	221
Appendix P	Limited Liability Assets – Minimum Maintenance	230
Appendix Q	Reimbursable Services	234
Appendix R	Management Commitments	235

1. Introduction

1.1. Background

1.1.1. Sydney Harbour Tunnel

- (a) Originally open to traffic in August 1992, the Sydney Harbour Tunnel (SHT) is one of two primary harbour crossings (the other being the Sydney Harbour Bridge), which connects to the Warringah Freeway for journeys north and to the Domain Tunnel / Eastern Distributor for journeys south. The SHT is a relatively unique tunnel in the Australian context, as an IMT construction, transverse ventilation system, and bespoke control systems.
- (b) The SHT is operated and maintained by the Sydney Harbour Tunnel Company (SHTC) under a 30-year concession that expires at midnight on 31 August 2022.

1.1.2. Domain Tunnel

- (a) The Domain Tunnel (also known as Cahill Tunnel) is a 380m long, bi-directional cut and cover tunnel opened to the public in 1962 that extends beneath Royal Botanic Gardens and Conservatorium Road. The Domain Tunnel is a critical part of the Sydney road network, and currently services over 120 000 vehicles per day.

1.1.3. Western Harbour Tunnel

- (a) The Western Harbour Tunnel (WHT) Project is the key piece of network integration for the Western Harbour Tunnel Beaches Link (WHTBL) program. It will provide a three-lane dual carriageway, tunnelled motorway connection between the under-construction Rozelle Interchange and the Warringah Freeway near North Sydney.
- (b) The broad scope of works for the design and construction of the WHT Project will include:
 - (i) 6.5 km dual three-lane tunnels from Rozelle Interchange to Warringah Freeway;
 - (ii) an Immersed Tube (IMT) tunnel crossing between Birchgrove and Balls Head;
 - (iii) underground connections to the M4-M5 Link Project beneath Rozelle;
 - (iv) tunnelled ramps and surface connections at Rozelle, North Sydney and Cammeray, including connections to and from the Warringah Freeway, Falcon Street and Berry Street;
 - (v) tunnelled stubs for underground connections to Beaches Link Project and Gore Hill Freeway Connection project under the Warringah Freeway near Cammeray;
 - (vi) construction, fit out and commissioning of a ventilation outlet and motorway facilities; and

(vii) operational facilities including a Motorway Control Centre (MCC) [REDACTED]

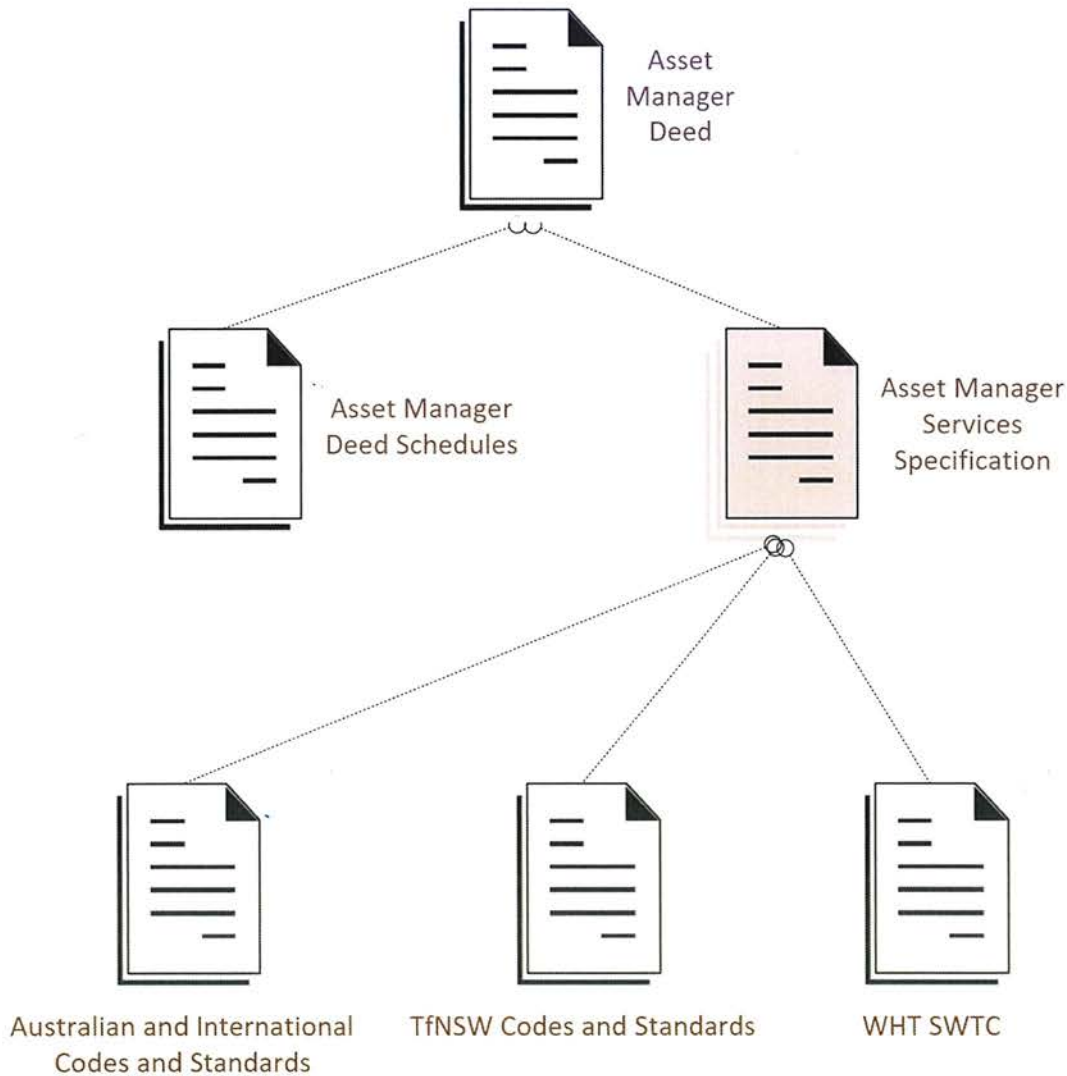
1.2. Purpose of this Document

- (a) This document describes the scope of the services the Asset Manager is required to perform, the key contracts the Asset Manager is required to establish and manage and the level of performance the Asset Manager is required to achieve.

1.3. Document Context

- (a) This AM Services Specification is a schedule to the AM Deed. The AM Services Specification references Australian, International and TfNSW Codes and Standards. The WHT Motorway and must be operated and maintained so that the WHT Motorway remains compliant with the WHT SWTC.

Figure 1-1 - AM Services Specification Context



OFFICIAL

1.4. Structure

- (a) This document is structured into the following sections:
- (i) general;
 - (ii) interaction with the WHT Delivery Team;
 - (iii) WHT procurement phase services;
 - (iv) WHT delivery phase services;
 - (v) mobilisation phase services;
 - (vi) operations and maintenance services;
 - (vii) asset management services;
 - (viii) asset information and artefacts;
 - (ix) handover;
 - (x) Sydney Harbour Tunnel Motorway and Domain Tunnel refurbishment;
 - (xi) Sydney Harbour Tunnel transition;
 - (xii) toll collection system;
 - (xiii) AM Services Plans;
 - (xiv) key contracts; and
 - (xv) level of performance.

1.5. Asset Management Services Phases

The following phases apply to the delivery of the AM Services by the Asset Manager:

- (a) SHT Mobilisation Phase,
- (b) WHT Procurement Phase,
- (c) WHT Delivery Phase,
- (d) WHT Mobilisation Phase,
- (e) Initial Asset Management Phase – only applies to the SHT Motorway and Domain Tunnel, and

(f) Asset Management Phase – applies to the SHT Motorway, Domain Tunnel and WHT Motorway.

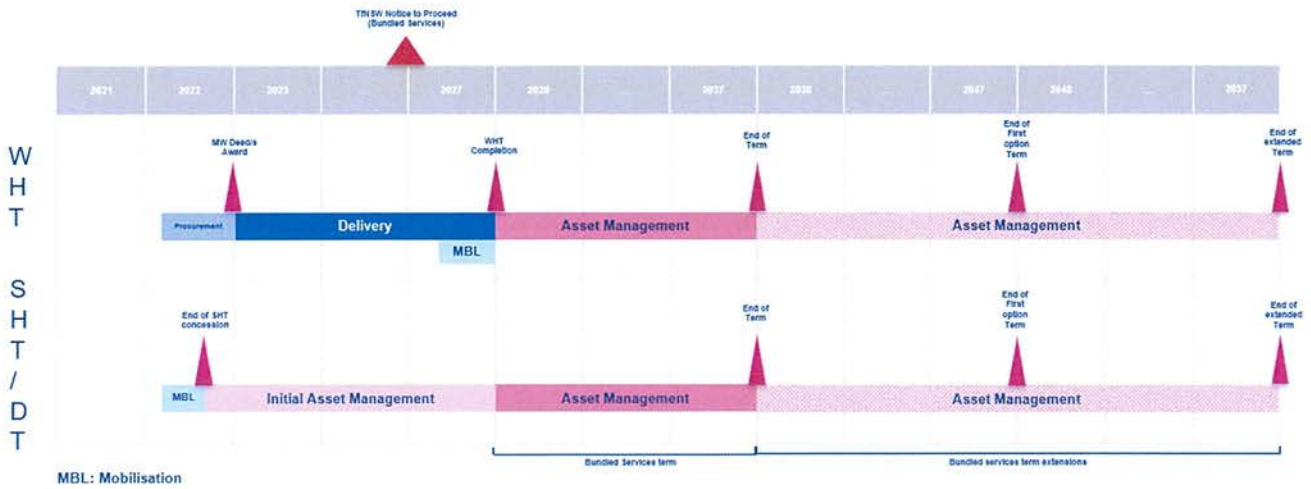


Figure 1-2 – Asset Management Services Phases (indicative dates)

1.6. Interpretation

(a) Any reference to the 'WHT SWTC' must be read as a reference to the WHT Main Works SWTCs.

(b) A reference to 'Deed' or 'AM Deed' in this document is a reference to the 'Asset Management Deed'.

(c) [Redacted]

(d) [Redacted]

(e) Unless the context requires otherwise, or unless specifically stated otherwise in this document, terms which have a defined meaning in another part of the AM Deed have the same meaning in this document.

(f) Unless the context requires otherwise, a reference to "this document" includes all the appendices, annexures and attachments to this document.

(g) Unless the context requires otherwise, a reference in this document to a "section" means a section of this document or annexure.

- (h) A reference to any required service, work or activity includes any services, work or activities necessary for the satisfactory completion and performance of the AM Services and compliance with the requirements of this AM Deed and Asset Management Best Practice.
- (i) If more than one requirement applies in respect of any part of the AM Services, then all requirements must be satisfied. If there are requirements which are mutually exclusive, then the requirement which delivers the greatest level of service, or is of the highest standard, applies.
- (j) A reference to Motorways in this document means the SHT Motorway, Domain Tunnel and WHT Motorway.
- (k) A reference to the 'Roads and Traffic Authority' or 'RTA' in any document is taken to be a reference to Transport for NSW and TfNSW respectively.
- (l) A reference to the 'Roads and Maritime Services' or 'RMS' in any document is taken to be a reference to Transport for NSW and TfNSW respectively.
- (m) Pursuant to the Transport Administration Act (RMS Dissolution) Act 2019 (NSW), on and from 1 December 2019, the functions, assets, rights and liabilities of Roads and Maritime Services were transferred to TfNSW.
- (n) References to RMS and TfNSW Specifications are to the current version of each publication.
- (o) In the RMS and TfNSW Specifications, relevant to the AM Services, any reference:
- (i) to 'Drawings' (or 'drawings') must be read as a reference to drawings certified by the 'Independent Certifier' in accordance with the Main Works Contract(s) and otherwise prepared and submitted in accordance with the Main Works Contract(s);
 - (ii) to the 'Contractor' or 'Company' must be read as a reference to the Asset Manager;
 - (iii) to the 'Project Verifier' must be read as a reference to TfNSW;
 - (iv) to the 'Contractor's Work' or 'Company's Work' must be read as a reference to the AM Services;
 - (v) to the 'Works' must be read as a reference to the Main Works, carried out by the Main Works Contractor or the AM Services as the context requires;
 - (vi) to submissions to RMS or otherwise, must be read to also be a submission to TfNSW; and
 - (vii) to Australian Standards or to codes are to the publications of Standards Australia and to the current version of each publication.
- (p) The Asset Manager bears the risk that compliance with the AM Services Specification will not fulfil the Asset Manager's obligations under this AM Deed. In particular, the Asset Manager will be

required to carry out any further activities additional to those specifically contemplated by the AM Services Specification to ensure that it satisfies its obligations under this AM Deed.

1.7. Glossary of Terms, Definitions and Abbreviations

(a) Defined terms used in this document are defined in the AM Deed or in Table 1 below.

Table 1 – Glossary of Terms, Definitions and Abbreviations

Term, Abbreviation	Definition
Aboriginal Procurement Policy (APP)	as defined by NSW Government in Reference Document “NSW Aboriginal Procurement Policy” (APP): The APP will contribute to the NSW Government’s strategic economic policy of Growing NSW’s First Economy. Government procurement provides a significant opportunity to increase Aboriginal skills and economic participation. The APP supports the NSW Government Plan for Aboriginal Affairs, OCHRE, and is a key deliverable under the Aboriginal Economic Development framework.
Acceptable Effects	The extent to which the ground conditions and existing infrastructure may be acceptably affected as determined by the designer of the Motorways
Accredited	the course is nationally recognised and that a registered training organisation can issue a nationally recognised vocational education and training qualification or VET statement of attainment following its full or partial completion.
Adjacent Motorway	means the WestConnex Motorway, Beaches Link Motorway, Warringah Freeway, Eastern Distributor and Sydney Harbour Bridge
AIS	Asset Information System
AM Deliverables	Main Works Contractor deliverables required for the AM Services
AM Services Plans	means the strategies, plans and procedures listed and specified in Appendix A of this AM Services Specification
AM Services Specification	means this specification
AM SMEs	Asset Management Subject Matter Experts
AMS	Asset Management System
Apprentice	an employee of an Apprentice Employer undertaking a recognised Australian Apprenticeship program and related qualification and holding a formal training contract who has been employed by that employer to undertake the AM Services.
Apprentice Employer	the Contractor and its Subcontractors in the Supply Chain who employ Apprentices, any Group Training Organisation engaged to provide Apprentices to those organisations.
Asset Condition Inspection	means asset condition inspections, conducted by independent industry professionals, which the Asset Manager is obliged to undertake at specified intervals (excluding asset condition assessments the Asset Manager conducts)

Asset Information Model	means the model developed to meet the requirements of WHT SWTC Appendix C.8 Digital Engineering Requirements and T MU AM 02001 ST Asset Information and Register Requirements
Asset Information System	means the system used to record all assets and the meta data relating to those assets
Asset Management Best Practice	means the practices used are recognised by industry as superior to any others because of the results produced and includes Maintenance Best Practices
Asset Management Deed	The deed to be entered into with the Asset Manager for performance of the AM Services
Asset Management Subject Matter Experts	means subject matter experts appointed by TfNSW
Australian and New Zealand Small and Medium Enterprises (ANZ SME)	Australian New Zealand micro, small and medium size enterprises with fewer than 200 employees.
Australian Qualifications Framework (or AQF)	the national policy for regulated qualifications in Australian education and training. AQF qualifications ensure national recognition and consistency, as well as common understanding across Australia of what defines each qualification.
Australian Skills Quality Authority (or ASQA)	the national regulator for Australia's vocational education and training sector. ASQA regulates courses and training providers to ensure nationally approved quality standards are met.
Authorities	has the same meaning as Authority
Beaches Link Motorway	means the proposed motorway / tunnel linking the Northern Beaches to the Warringah Freeway in North Sydney.
Breakdown Maintenance	means unplanned maintenance activities performed, after an asset has failed, to restore the asset to a state in which it can perform its required function
Carriageway	means that portion of the roadway, including but not limited to Lanes, breakdown bays, maintenance bays, auxiliary lanes and shoulders, that is set aside for the use of traffic which is either moving or stationary.
Configuration Management	means a systems engineering process for establishing and maintaining consistency of an assets performance, functional, and physical attributes with its requirements, design, and operational information throughout its life.
Corrective Maintenance	means planned maintenance activities performed when an asset has failed or is close to failure or unsafe to use, and intended to restore the asset to a state in which it can perform its required function
Date for WHT Opening Completion	means the scheduled date for the opening of the WHT
Design Life	means the period of time during which the item is expected by its designers to work within its specified parameters
Digital Engineering and Asset Information Artefacts	, or DEAIA, means the artefacts (electronic or physical) that accurately describe the Assets and record the asset attributes required to comply with this AM Services Specification

Disaster Recovery Site	means [REDACTED]
Diversity	a broad range of factors that make people unique including: gender and gender identity, sexual orientation, religious belief, race (including colour, nationality, descent and ethnic, ethno-religious or national origin or immigration), age, disability (including both visible disabilities – physical – and less obvious disabilities such as sensory, intellectual, mental health or psycho-social), marital or parental status, educational background and socioeconomic status.
Domain Tunnel	means the Doman Tunnel Motorway which is the tunnel under the Botanic Gardens linking the Cahill Expressway to the cross Harbour Tunnel
DRS	Disaster Recovery Site
DT	Domain Tunnel
Eastern Distributor	means the 6-kilometre-long motorway which is part of the M1, linking the Sydney central business district with Sydney Airport
Emergency Services	means Fire and Rescue NSW, NSW Ambulance Services, NSW Police Force and NSW State Emergency Services
EMS	Environmental Management System
Engineering Decisions	means any decision that changes the form, fit, function, performance or utility of an asset or changes the way an asset is operated or maintained.
Environment Management System	means the quality management system referred to in section 8.4.4
Environmental Documents	means the Planning Approval for the WHT Motorway and the Environment Protection Licences for the SHT Motorway
Environmental Incident	means an incident in that results in a breach of the Environmental Documents, Environment Protection Licence requirements or other environmental licences
Functional Configuration Audit	means a formal audit conducted to verify the functional characteristics of an asset have met the requirements of the WHT SWTC with respect to the WHT Motorway, not degraded the functions of the SHT Motorway with respect to the SHT Motorway, and other relevant requirements
General Inspection	refers to a type of inspection identified as one of the minimum maintenance requirements for Limited Liability Assets, and is defined in Appendix P
Graduate Placements	a structured, paid program with training and mentoring for university graduates holding recognised higher education qualifications often leading to professional qualifications
Handover Asset Condition Inspection	means the asset condition inspection described in section 11.2 of this AM Services Specification and clause 18.13 of the Deed
Handover Condition	means the minimum condition that the Asset Manager must handover the Motorways assets in as defined in Section 11.3 of the AM Services Specification

Heavy Vehicle	means vehicles intended for the carriage of goods and the maximum authorised mass is over the limit (ranging from 3.5 to 7 tons) of light commercial vehicles
ICMS	Integrated Contract Management System
Incident Response Services	means the incident response services described in section 8.2.4
Incident Response Services Entity	means the entity TfNSW will enter into an agreement with for the provision of Incident Response Services
Inclusion	the achievement of a work environment where there is respect and support for differences and diversity of thought. The workplace is characterised by a flexible work culture supportive of diverse needs and free from discrimination, harassment or bullying. It's about having a workplace culture where different perspectives are heard and allowed to contribute to the success of the business.
Integrated Contract Management System	means a system that the Asset Manager must develop, implement, review, improve and maintain to coordinate, integrate and align the protocols, processes and documentation relating to the AM Services
Lane	means that part of the roadway set aside for the normal movement of a single stream of vehicles
Lane Closure	means each separate instance on which any Lane (or part thereof) on a Carriageway is not Available
LCC	Life Cycle Cost
LLA	Limited Liability Asset(s)
Main Carriageway	means the through Carriageway of the Motorway
Main Carriageway Closure	means each separate instance on which all Lanes of a single Main Carriageway are not Available
Main Works Contract(s)	means each of the Main Works P1 Contract and the Main Works P2 Contract
Main Works Contractor	means the Main Works P1 Contractor and the Main Works P2 Contractor
Main Works Contractor Operational Readiness Evaluation Plan	means the plan prepared by the Main Works Contractor to achieve operational readiness
Make Safe Repairs	means repairs and actions undertaken to rectify damage caused by Motorway Incidents so as to make the affected motorway safe for motorists and allow closed Lanes to be reopened to traffic
MCC	Motorway Control Centre
Minimum Asset Condition	means the asset condition specified in the Technical Maintenance Plan which the relevant asset must meet or exceed throughout the Initial Asset Management Phase and Asset Management Phase
Minimum Operating Equipment	means the minimum set of equipment with which each of the Motorways can be operated without unacceptable risk to motorists, road works or Asset Manager's personnel
Motorway Control Centre	means the combined Motorway Control Centre [REDACTED]

Motorway Incident	means an event or issue (both planned and unplanned) that has or may have an adverse impact on the traffic flow of the road network or to road user safety, requiring a response from Motorway traffic operations staff. For the avoidance of doubt, maintenance on the Motorways, other than Make Safe Repairs, is not a Motorway Incident.
Nationally Recognised Accredited Training	an AQF recognised qualification or part qualification, leading to formal certification or statement of attainment that a graduate has achieved learning outcomes as described in the AQF.
OMCS	Operations Management and Control System
Operations and Maintenance Manuals	mean the manuals describing how the assets on the Motorways should be safely and effectively operated and maintained
Other Asset	means an asset other than a Residual Life Assessed Asset
Other Motorways	means other NSW motorways
Partial Closure	means where the speed on a Lane (or part thereof) has been reduced by more than 20 km per hour from the posted speed limit for normal operations
Physical Configuration Audit	means the formal examination of the "as-built" configuration of a configuration item against its technical documentation to establish or verify the configuration item's product baseline
Planned Maintenance	means any maintenance activity that is planned, documented, and scheduled
Predicted Effects	means detailed and rigorous engineering analysis undertaken during design development to predict the effects of the Motorways on existing ground conditions and infrastructure (including roads, railways, Utility Services, buildings and any part of the Motorways)
Preventive Maintenance	means planned maintenance activities (including inspections) performed at predetermined intervals, or corresponding to prescribed criteria, and intended to reduce the probability of asset failure or performance degradation and to retain an asset at or above the Minimum Asset Condition
Primary Motorway Incident	means a Motorway Incident other than a secondary Motorway Incident. for example a stopped vehicle
Quality Management System	means the quality management system referred to in section 8.4.3
Ramp	means each of the entry ramps and exit ramps connecting the Sydney road network and a Main Carriageway
Ramp Closure	means each separate instance on which all Lanes located on a Ramp are not Available
Recognised Aboriginal Business	a business: <ul style="list-style-type: none"> certified or registered as an Indigenous business by Supply Nation (formerly the Australian Indigenous Minority Supplier Council); which is certified as an Indigenous business by the NSW Indigenous Chamber of Commerce; an organisation representing Aboriginal owned businesses in another state or territory that is a member of the First Australians Chamber of Commerce and Industry; or

	<ul style="list-style-type: none"> that meets the definition of an Indigenous enterprise under the definition used in the Australian Government's Indigenous Procurement Policy
Registered Training Organisation (or RTO)	a training provider registered by Australian Skills Quality Authority (or a relevant state regulator) to deliver vocational education and training services.
Road and Tunnel Safety Officer	means the person designated as responsible for oversight of operational safety of the Motorways
Secondary Motorway Incidents	means a Motorway Incident whose main contributing cause is a Primary Motorway Incident. for example a vehicle collision caused by a stopped vehicle in a Lane.
SHT	Sydney Harbour Tunnel
SHT Initial Spare Parts	means the SHT Motorway Spare Parts handed over to the Asset Manager
SHT OMCS	Means the Sydney Harbour Tunnel Central Control Computer system handed over to the Asset Manager at the commencement of the Initial Asset Management Phase and any upgrades or replacements made by the Asset Manager.
SHT TACF	
SHTC	Sydney Harbour Tunnel Company
Social Enterprises	businesses that: <ul style="list-style-type: none"> are driven by public or community benefit be it economic, social, environmental or cultural; derive most of their impact from trade, not donations or grants; use the majority (at least 50 per cent) of profits to work towards their mission; and can verify their status as a social enterprise through third party certification.
Spare Parts	means spare equipment available to be used for Breakdown Maintenance, Preventive Maintenance and Corrective Maintenance
Specified Design Life	means the minimum design life specified in the WHT SWTC for the WHT Motorway and no less than the design life of the existing SHT Motorway assets for the SHT Motorway
Stakeholders	means any a person or entity with an interest or concern in the Motorways including those entities listed in section 6.8.3 of this AM Services Specification
Supervisor	all workers who act in a supervisory capacity on the Maintenance Site from level one upwards.
Supply Chain	for the purposes of Workforce Development and Industry Participation, the network of Subcontractors operating in Australia, and includes but is not limited to the Contractor, its Subcontractors and other entities engaged by them for the relevant Conditions of Contract;
Supportability Risk	an assessment the key risks that may adversely impact on the future ability to economically maintain, technically support and repair an asset

Supportable Residual Asset Life	means the time the asset can be economically maintained, technically supported and repaired
SWTC	Scope of Works and Technical Criteria
Sydney Harbour Tunnel Company	means Sydney Harbour Tunnel Company Pty Ltd ABN 72 003 315 375
TACF	Tunnel Administration and Control Facility
Technical Maintenance Plans	means the plans described in Appendix A, section A.4.7 and A.5.7 of this AM Services Specification
Tolling Enabling Infrastructure	means any structures, civil works, power reticulation, communication cabling and cableway required to support the operation of the tolling equipment but is not maintained by the tolling equipment service provider
TOTEX	means all capital and recurrent expenditure necessary to operate, maintain, replace, refurbish, rehabilitate, repair and rehabilitate motorway assets
Trade Workforce	any person that is required to hold a contractor licence for the trade in which they are engaged or a tradesperson on the Sydney Metro project. This included any person who has qualified, or qualifies by service as an apprentice, for employment as a tradesperson.
Traffic Control Plans	means the traffic control plans referred to in section 8.5.9
Trainee	an employee registered as a trainee, holding a formal training contract with their employer, who is directly employed by the Asset Manager or its Subcontractors in the supply chain or hosted via a group training organisation and who has been employed by that employer to undertake the AM Services on the Maintenance Site at the Construction Site for a period not less than 12 weeks
Training Package	means a set of nationally endorsed standards, qualifications and guidelines used to assess the skills and knowledge people need to perform effectively in the workplace
Unit of Competency	an AQF recognised specification of knowledge and skill, and the application of that knowledge and skill, to the standard of performance expected in the workplace
Unplanned Maintenance	means any maintenance tasks that is not Planned Maintenance
Upskilling	a Workforce training or development activity for employed individuals, undertaking one or more accredited courses of learning and development leading to a nationally recognised qualification, skills set or units of competency. Does not include training undertaken to meet compliance requirements detailed in applicable pieces of legislation and associated regulations, standards and accreditations or in the various approvals, licences, and permits that may be necessary for the commencement and control of the Works and the AM Services
Warringah Freeway	means the 3-kilometre divided freeway that forms part of the M1, the Sydney Orbital Network, and the Highway 1 network
WestConnex Motorway	means the M4-M5 Link Motorway, M8 Motorway and M4East Motorway
WHS	Work Health and Safety

WHS Incident	means an incident in relation to a workplace that exposes a worker or any other person to a risk to a person's health or safety
WHT	Western Harbour Tunnel
WHT Delivery Team	Means the TfNSW project team responsible for the delivery of the Western Harbour Tunnel Project
WHT Initial Spare Parts	means the Spare Parts purchased by the Main Works Contractor and handed over to the Asset Manager
WHT Main Works AM Deliverables	mean the artefacts developed by the Main Works Contractor and required by the Asset Manager to perform the AM Services
WHT Motorway Air Quality Community Consultative Committee	means the committee established to consult on WHT Motorway air quality
WHT OMCS	Means the Western Harbour Tunnel Operations Management and Control System handed over to the Asset Manager at the commencement of the Asset Management Phase and any upgrades or replacements made by the Asset Manager.
WHT Reference Design	means the early design of the WHT Motorway as included in Schedule 35 of the AM Deed
WHT SWTC	means the Main Works SWTCs
Women in Non-Traditional Trades and Occupations	women working in a non-traditional trades; undertaking vocational education and training pathways; or working in occupations where women comprise 25 per cent or less of total employment in accordance with the Department of Education, Skills and Employment Australian Jobs Occupational Matrix - https://docs.employment.gov.au/documents/australian-jobs-occupation-matrix . Any non-traditional trades; undertaking vocational education and training pathways; or occupations that are not on the Australian Jobs Occupational Matrix will be approved by TfNSW on a case by case basis.
Women in Senior leadership and management	women in senior leadership and management - Tier 1 – 4 of organisational structure
Work Experience Placements	a structured placement developed in partnership with education providers, offering young people in statutory, tertiary, vocational or higher education an opportunity for work experience. Placements must be for a minimum of 1 week.
Work Health and Safety Management System	means the work health and safety management system referred to in section 8.4.2
Workforce	all workers employed directly or contracted by the Contractor, Subcontractors and the broader Supply Chain inclusive of management and professional, technical and trade.
Workforce Skills Development	a Workforce training or development activity through undertaking nationally recognised accredited training and development that leads to qualifications, skills sets or units of competency at AQF Certificate II and above that support the employee to meet or exceed delivery requirements and identified longer term career progression. This does not include 'training' undertaken to meet compliance requirements detailed in applicable legislation and associated regulations, standards and accreditations or in the various approvals,

OFFICIAL

licences, and permits that may be necessary for the commencement and control of work on the Maintenance Site.

2. General

- (a) The key outcomes of the AM Services are:
- (i) **Best for Network Performance.** The AM Services will ensure best for network motorway performance over best for individual motorway or road segment (where a compromise is required).
 - (ii) **Safe Operation of the Network.** The systems and solution design reduces the risk to road users and staff, as low as possible.
 - (iii) **Optimise and protect the value in the asset.** Ensure best whole of life outcomes for customers, project and operations over the life of the asset.
- (b) The Asset Manager must plan and execute the AM Services to ensure:
- (i) the health and safety of motorists, cyclists, the public, Emergency Services and workers is maintained and not put at risk; and
 - (ii) property and assets are protected.
- (c) The Asset Manager must perform the AM Services in accordance with:
- (i) this AM Services Specification; and
 - (ii) Asset Management Best Practice.
- (d) Except as stated in the AM Deed, the Asset Manager has allowed for the provision of all work and materials necessary for the AM Services, whether or not expressly mentioned in this AM Services Specification. All such work and materials:
- (i) must be undertaken and provided by Asset Manager at its own cost;
 - (ii) form part of AM Services and will not constitute a Change; and
 - (iii) will not entitle Asset Manager to make a Claim except as provided for in the AM Deed.
- (e) The Asset Manager will meet all commitments listed at Appendix R in the delivery of the AM Services.
- (f) The Asset Manager must undertake all tasks, activities and things necessary to ensure that all Asset Manager personnel, including staff, contractors and subcontractors satisfy the requirements of this document.

- (g) The Asset Manager must cooperate with other contractors of TfNSW and the Principal and perform the AM Services to minimise any interference with or disruption to other contractor's activities.
- (h) The AM Services must comply with the requirements of the:
 - (i) Codes and Standards;
 - (ii) Minimum Maintenance and Asset Condition Requirements in Appendix K; and
 - (iii) the Technical Maintenance Plans.
- (i) If the Codes and Standards or suitable Australian Standards do not exist for any element of the AM Services involving the replacement or renewal of assets and their component parts or new construction, the Asset Manager may use international standards that reflect industry best practice, subject to obtaining the written approval of the Principal's Representative.
- (j) Furthermore, and without limiting the Asset Manager's obligations within this AM Deed, the AM Services includes all things that the Asset Manager is required to do to operate the Motorways and maintain the Motorways in accordance with this AM Deed and Asset Management Best Practice.

3. Not Used

4. Interaction with WHT Delivery Team

- (a) The Asset Manager must cooperate with the WHT Delivery Team and comply with reasonable instructions from the Principal's Representative.

5. WHT Procurement Phase Services

5.1. Summary of Procurement Phase Services

- (a) The Asset Manager must provide the following services during the WHT Procurement Phase:
 - (i) contribute to the review and refinement of the Main Works SWTCs as relevant to the safe, cost effective and sustainable operation and maintenance of the WHT Motorway and end of life disposal of assets;
 - (ii) provide advice to the Principal and the WHT Delivery Team on WHT operations, maintenance, asset management and TOTEX in support of Main Works tender activities;
 - (iii) Support and contribute to the refinement of the LCC Model, baselined against the WHT Reference Design; and

- (iv) other services as identified in the Procurement and Delivery Phase Plan.

5.2. WHT SWTC Development Support

- (a) The Asset Manager must review and comment on the WHT SWTC especially with respect to requirements relevant to the safe, cost effective and sustainable operation and maintenance of the WHT Motorway and end of life disposal of assets.
- (b) The Asset Manager must review and comment on the WHT SWTC with respect to asset resilience including resilience to flooding, extreme temperature events, terrorism, cyber threats and sabotage and take into consideration the TfNSW Asset Resilience Strategy or equivalent document when undertaking the review.
- (c) The Asset Manager must support and contribute to the refinement of the WHT SWTC Appendix G.2 Operations and Maintenance Requirements.
- (d) The Asset Manager must support and contribute to the refinement of OMCS requirements for Graphical User Interfaces and Human Machine Interfaces.
- (e) The Asset Manager must support and contribute to the refinement of system engineering requirements including requirements for system safety assurance, failure modes and effects criticality analysis, reliability, availability and maintainability analysis and verification and verification;
- (f) The Asset Manager must support and contribute to the refinement of Motorway Control Centre and Disaster Recovery Site requirements including WHT SWTC Appendix B.32.
- (g) The Asset Manager must support and contribute to the refinement of WHT SWTC operational readiness requirements including:
 - (i) requirements for Asset Manager involvement in testing and commissioning activities undertaken by the Main Works Contractor;
 - (ii) requirements for Asset Manager acceptance testing;
 - (iii) requirements of Asset Manager training by the Main Works Contractor;
 - (iv) requirements for WHT Main Works AM Deliverables and Digital Engineering and Asset Information Artefacts;
 - (v) Main Works Contractor operational readiness evaluation plan content; and
 - (vi) Asset Manager requirements for Functional Configuration Audits, Physical Configuration Audits and progressive inspections of the Main Works.

- (h) The Asset Manager must assist in the drafting of new SWTC requirements to capture operations, maintenance and asset management related Main Works Contractor innovations and offered function or performance over and above the WHT SWTC requirements.

5.3. WHT Main Works Tender Activity Support

5.3.1. General

- (a) The Asset Manager must collaborate and cooperate with the Principal, Asset Management Subject Matter Experts (AM SMEs) and the WHT Delivery Team to effectively support Main Works tender activities.
- (b) The Asset Manager must make available competent and experienced personnel to support the Main Works tender programme, including, but not limited to, tenderer interactive sessions, interim submission reviews, tender clarifications and departures, and tender evaluation.

5.3.2. Interactive Session Support, Clarifications and Departures

- (a) The Asset Manager must, if requested by the Principal or the Principal's Representative:
 - (i) support the conduct of Main Works tender interactive sessions including:
 - A. review and comment on interactive session material provided by Main Works Tenderers;
 - B. attend relevant pre-interactive session strategy meetings;
 - C. attend interactive sessions; and
 - D. attend relevant interactive session washup meetings;
 - (ii) assist the Principal, AM SMEs and the WHT Delivery Team with analysis and response to Main Works tenderer requests for clarifications;
 - (iii) review and contribute to the development of tender addendum; and
 - (iv) assess and advise the Principal, AM SMEs and the WHT Delivery Team on the potential impact of proposed exceptions and departures.

5.3.3. Whole of Life Assessment

- (a) The Asset Manager must support the Principal, AM SMEs and the WHT Delivery Team with:
 - (i) assessment of the TOTEX impact of designs proposed by the Main Works Tenderers by reference to the WHT LCC Model and WHT Reference Design;
 - (ii) identification of TOTEX reduction opportunities; and

(iii) potential impact of climate change on TOTEX for each proposed design.

5.3.4. Design Assessment

- (a) The Asset Manager must support the assessment of Main Works Tender Proposal Documents including:
- (i) the review and evaluation of tenderer design proposals; and
 - (ii) evaluation of the relative merit of design options proposed by the tenderers.
- (b) The Asset Manager must consider the following when undertaking tenderer design reviews:
- (i) reliability, availability, maintainability and durability of the proposed design;
 - (ii) operational safety;
 - (iii) safety in design;
 - (iv) efficient use of energy and resources during the Asset Management Phase;
 - (v) sustainability in design and end of life recycling and reuse of assets;
 - (vi) traffic management and integration with the road network;
 - (vii) Motorway Incident management including effective over height vehicle management;
 - (viii) compliance with Environmental Documents;
 - (ix) emergency and threat management; and
 - (x) other items as described in Appendix H.

5.3.5. Delivery Strategy Assessment

- (a) The Asset Manager must support the assessment of Main Works tenderer delivery strategies including:
- (i) involvement of the Asset Manager in test and commissioning activities managed by the Main Works Contractor;
 - (ii) operational readiness strategy and operational readiness evaluation plans;
 - (iii) WHT Initial Spare Parts inventory;
 - (iv) Digital Engineering and Asset Information Artefacts strategy and plan;
 - (v) proposed systems engineering processes; and

- (vi) review of Main Works Contractor plans including:
 - A. quality management plans;
 - B. design management plans;
 - C. systems engineering management plans;
 - D. test and commissioning plans; and
 - E. operational readiness and evaluation plans.

5.4. LCC Model Support

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.5. Key Competencies

- (a) During the WHT Procurement Phase, the Asset Manager must make available personnel with the following skills, experience, and credentials:
- (i) certified senior practitioner in asset management or equivalent;
 - (ii) expertise in the application of life cycle costing analysis;
 - (iii) experience in tunnel operations;
 - (iv) experience in tunnel and immersed tube maintenance;
 - (v) experience and expertise in the design and support of tunnel mechanical and electrical systems;
 - (vi) experience and expertise in the design and support of tunnel ITS;
 - (vii) experience and expertise in the design and support of tunnel control room systems; and
 - (viii) experience in pavement lifecycle analysis.

6. WHT Delivery Phase Services

6.1. Summary of Delivery Phase Services

- (a) The Asset Manager must carry out the WHT Delivery Phase services in a productive, coordinated and collaborative manner with the Principal, the WHT Delivery Team, the Main Works Contractor and any other parties directly involved in the delivery of the Main Works.

- (b) The Asset Manager must prepare a Procurement and Delivery Phase Plan as specified in Appendix A.
- (c) The Asset Manager must plan and prepare for the commencement of WHT Motorway operations and undertake WHT Delivery Phase AM Services in accordance with the Procurement and Delivery Phase Plan.
- (d) The Asset Manager must support the Principal and the WHT Delivery Team with commercial assessment of the TOTEX impact of proposed design changes, Main Works Defects and Main Works Variation proposals by reference to the LCC Model including:
 - (i) cost impact on operations services;
 - (ii) cost impact on maintenance services;
 - (iii) cost impact on Major Repair and Replacement Work; and
 - (iv) impact on operational safety.
- (e) The Asset Manager must:
 - (i) develop a Life Cycle Cost Model Support Plan that complies with Appendix A, section A.3.8; and
 - (ii) provide support to the Principal and WHT Delivery Team in accordance with the Life Cycle Cost Model Support Plan.
- (f) The Asset Manager must support WHT design activities including:
 - (i) undertake reviews of Main Works Design Documents and provide reviewed comments to the Principal and the WHT Delivery Team;
 - (ii) attend and contribute to design reviews and workshops; and
 - (iii) undertake an assessment of cyber security provisions.
- (g) The Asset Manager must develop Asset Management Phase strategies, plans and procedures including:
 - (i) the AM Services Plans; and
 - (ii) traffic management, incident response and emergency response strategies suitable for conversion into Traffic Control Plans by the Main Works Contractor.
- (h) The Asset Manager must undertake test and commissioning activities managed by the Main Works Contractor including:

- (i) observe testing and commissioning activities; and
 - (ii) perform user acceptance testing and other commissioning activities that require control room operator involvement.
- (i) The Asset Manager must support and undertake operational readiness activities.
 - (j) The Asset Manager must confirm WHT Main Works AM Deliverables are suitable and fit for purpose with respect to the conduct of the AM Services.
 - (k) The Asset Manager must confirm WHT Digital Engineering and Asset Information Artefacts are suitable and fit for purpose with respect to the conduct of the AM Services.
 - (l) The Asset Manager must undertake a criticality assessment of the WHT Initial Spare Parts inventory.
 - (m) The Asset Manager must further develop an Asset Information Model that describes for each asset the attributes to be imported into the Asset Information System.

6.2. WHT Design Review Support

6.2.1. General

- (a) The Asset Manager is integrated into the design review process.
- (b) The Asset Manager must conduct formal design reviews concurrent with the Principal, AM SMEs the WHT Delivery Team and the Independent Certifier.

6.2.2. Design Reviews

- (a) The Asset Manager must review the WHT Main Works Design Documents, and any other documentation as requested by the Principal's Representative, and provide comments on the WHT Main Works Design Documents as relevant to the safe, cost effective and sustainable operation and maintenance of the WHT Motorway and with consideration of the design review guidance in Appendix H.
- (b) The Asset Manager must review the WHT Main Works Design Documents and provide comments in accordance with the timeframes nominated in clause 15.2 of the AM Deed.
- (c) The Asset Manager must:
 - (i) identify, and promptly submit in writing to the Principal's Representative any issues or risks which have the potential to adversely affect the safe and effective operation and maintenance of the WHT Motorway, durability of the assets, compliance with regulations, licence and Environmental Documents, TOTEX or delivery of the AM Services;

- (ii) identify, and promptly submit in writing to the Principal's Representative any opportunities or innovations which may improve the safe and effective operation and maintenance of the WHT Motorway, durability of the assets, TOTEX or delivery of the AM Services; and
- (iii) undertakes tasks or activities requested by the Principal or the Principal's Representative relating to the resolution of design issues or opportunities relevant to the AM Services or optimisation of TOTEX.

6.2.3. Meetings and Workshops

- (a) The Asset Manager must participate in meetings and workshops as requested by the Principal or the Principal's Representative including, but not limited to:
 - (i) requirement workshops;
 - (ii) design development workshops;
 - (iii) design reviews;
 - (iv) Traffic Control Plan development workshops;
 - (v) Reliability, availability, maintainability workshops;
 - (vi) safety in design meetings and workshops;
 - (vii) system safety assurance meetings and workshops; and
 - (viii) coordination meetings.

6.3. Whole of Life Assessment

- (a) The Asset Manager must support TOTEX assessment of:
 - (i) design (including technology) options;
 - (ii) equipment and material selection options;
 - (iii) design changes;
 - (iv) reliability, maintainability and availability outcomes;
 - (v) Main Works Variation proposals; and
 - (vi) other items that might have a material impact on TOTEX.

6.4. WHT Acceptance Testing and Commissioning

- (a) The Asset Manager must support Main Works testing and commissioning activities in a timely and collaborative manner.
- (b) The Asset Manager must:
 - (i) ensure that relevant personnel with appropriate skills and experience are in attendance to observe the test and commissioning activities identified in the WHT SWTC as requiring Asset Manager involvement;
 - (ii) must review and provide comment on Main Works Contractor testing and commissioning plans;
 - (iii) support reasonable requests by the Principal's Representative or Main Works Contractor to support other testing and commissioning activities;
 - (iv) identify, and promptly inform the Principal's Representative of any testing and commissioning issues which have the potential to adversely affect the performance or durability of the WHT Motorway or delivery of the AM Services; and
 - (v) identify opportunities which may improve the performance or durability of the WHT Motorway or delivery of the AM Services.

6.5. Inspections and Audits

6.5.1. Functional Configuration Audit

- (a) The Asset Manager must participate in the conduct of Functional Configuration Audits undertaken by the Main Works Contractor.
- (b) The Asset Manager must promptly submit in writing to the Principal's Representative details of any undelivered functionality specified in the WHT SWTC that has the potential to adversely affect the safe and effective operation and maintenance of the WHT Motorway or prevent the Asset Manager from undertaking any part of the AM Services.

6.5.2. Physical Configuration Audit

- (a) The Asset Manager must undertake Physical Configuration Audits and progressive inspections as detailed in the Digital Engineering and Asset Information Management Plan and allowed for in the Main Works Contract(s).
- (b) The Asset Manager must promptly submit in writing to the Principal's Representative details of any material differences between the Digital Engineering and Asset Information Artefacts and the

delivered assets that has the potential to adversely affect the safe and effective operation and maintenance of the WHT Motorway, the durability of the WHT Motorway or prevent the Asset Manager from undertaking any part of the AM Services.

6.5.3. Asset Inspections

- (a) The Asset Manager must support the physical inspection of WHT Motorway as reasonably requested by the Principal's Representative.
- (b) The Asset Manager must promptly submit in writing to the Principal's Representative any issue observed that has the potential to adversely affect the safe and effective operation and maintenance of the WHT Motorway, the durability of the WHT Motorway or prevent the Asset Manager from undertaking any part of the AM Services.

6.6. Strategies, Plans and Procedures

6.6.1. WHT Motorway Emergency Response Strategy

- (a) The Asset Manager must develop an emergency response strategy for all credible emergency response and threat scenarios including, but not limited to:
 - (i) WHT Motorway fire;
 - (ii) WHT Motorway chemical spills;
 - (iii) WHT Motorway flooding;
 - (iv) WHT Motorway evacuation;
 - (v) MCC evacuation;
 - (vi) earthquakes and tsunamis;
 - (vii) sabotage; and
 - (viii) emergencies in Adjacent Motorways.
- (b) The emergency response strategy must support the development, by the Main Works Contractor, of Traffic Control Plans and other OMCS functionality necessary to facilitate the timely and accurate implementation of emergency response actions.
- (c) The Asset Manager must deliver the emergency response strategy by the date reasonably required by the Main Works Contractor.
- (d) The Asset Manager must consult with Emergency Services on the development of the emergency response strategies.

- (e) The Asset Manager must resolve all issues raised by Emergency Services with respect to the emergency response strategies developed by the Asset Manager or promptly refer any issues that cannot be resolved by the Asset Manager to the Principal's Representative.

6.6.2. WHT Motorway Traffic Management Strategy

- (a) The Asset Manager must develop a traffic management strategy for all credible scenarios that require the implementation of traffic management including, but not limited to:
 - (i) Lane and Carriageway maintenance closures / planned works;
 - (ii) traffic congestion;
 - (iii) major / special events;
 - (iv) local flooding;
 - (v) diversions;
 - (vi) Motorway Incident including, but not limited to:
 - A. vehicle breakdowns;
 - B. Over Height Vehicles;
 - C. Dangerous Goods Vehicles;
 - D. unauthorised personnel or animals on Carriageways;
 - E. wrong way vehicles;
 - F. debris; and
 - (vii) Motorway Incidents on Adjacent Motorways.
- (b) The traffic management strategy must support the development, by the Main Works Contractor, of Traffic Control Plans and other OMCS functionality necessary to facilitate the timely and accurate implementation of traffic management.
- (c) The Asset Manager must deliver the traffic management strategy by the date reasonably required by the Main Works Contractor.
- (d) The traffic management strategy must support the safe and effective implementation of physical traffic management measures.

6.6.3. Review of Main Works Contractor Deliverables

- (a) The Asset Manager must review the WHT Main Works AM Deliverables, Digital Engineering and Asset Information Artefacts and any other documentation as requested by the Principal's Representative and provide comments on the WHT Main Works AM Deliverable and Digital Engineering and Asset Information Artefacts as relevant to the safe, cost effective and sustainable operation and maintenance of the WHT Motorway.
- (b) The Asset Manager must review the WHT Main Works AM Deliverables and Digital Engineering and Asset Information Artefacts and provide comments in accordance with the timeframes nominated in the Main Works Contract(s) or the Main Works Interface Deed or the Main Works Contractor programme as applicable.
- (c) The Asset Manager must:
 - (i) identify, and promptly submit in writing to the Principal's Representative any issues or risks which have the potential to adversely affect the safe and effective operation and maintenance of the WHT Motorway, or prevent the WHT Main Works AM Deliverables or Digital Engineering and Asset Information Artefacts from being suitable and fit for purpose with respect to the conduct of the AM Services; and
 - (ii) undertake tasks or activities requested by the Principal or the Principal's Representative relating to the resolution of WHT Main Works AM Deliverables or Digital Engineering and Asset Information Artefacts issues.

6.6.4. Other Plans & Procedures

- (a) The Asset Manager must support and contribute to the development of other Principal or WHT Delivery Team plans and procedures as reasonably requested by the Principal's Representative having due regard to the experience, skills and competencies of the Asset Manager.

6.7. Asset Information Model

- (a) The Asset Manager must verify the Digital Engineering and Asset Information Artefacts received and transferred to the Asset Information System comply with the Asset Information Model requirements specified in Appendix F. Any issues with the Digital Engineering and Asset Information Artefacts received from the Main Works Contractor must be promptly brought to the attention of the Principal's Representative in writing.
- (b) The Asset Manager must collaborate with the Main Works Contractor on the refinement of the Asset Information Model.

6.8. WHT Operational Readiness

6.8.1. General

OFFICIAL

- (a) The Asset Manager must undertake all activities identified in the Main Works Contractor Operational Readiness Evaluation Plan reasonably assigned to the Asset Manager.

6.8.2. Training

- (a) The Asset Manager must make appropriate and suitably qualified personnel available for Main Works Contractor provided training at the times reasonably required by the Main Works Contractor.
- (b) The Asset Manager must plan, manage and complete the training of Emergency Services personnel and any other third parties (including the Principal nominees) prior to the Date of WHT Opening Completion.

6.8.3. Stakeholder Engagement

- (a) The Asset Manager must:
 - (i) establish and develop collaborative and effective working relationships with all relevant Stakeholders to the AM Services, including but not limited to:
 - A. TfNSW and the Principal;
 - B. TMC;
 - C. Emergency Services;
 - D. Adjacent Motorways operation and maintenance service providers;
 - E. Adjacent Motorways operators;
 - F. utility service providers;
 - G. relevant NSW Government agencies;
 - H. relevant local government; and
 - I. other relevant Authorities; and
 - J. where appropriate, formalise the nature of these relationships through documented and agreed interface protocols.
- (b) The Asset Manager must consult with relevant Stakeholders on:
 - (i) the WHT Motorway emergency and threat response strategy;
 - (ii) the WHT Motorway traffic management strategy; and
 - (iii) the AM Services Plans.

OFFICIAL

6.8.4. Emergency Services Exercises

- (a) The Asset Manager must support and collaborate with the Main Works Contractor on the planning, preparation and execution of commissioning and operational readiness activities involving Emergency Services.
- (b) The Asset Manager must participate in commissioning and operational readiness activities involving Emergency Services.

6.8.5. Business Continuity & Disaster Recovery

- (a) The Asset Manager must exercise business continuity plans and procedures prior to the Date of WHT Opening Completion.
- (b) [REDACTED]
- (c) [REDACTED]

6.9. Initial Spares

- (a) Initial Spare Parts will be supplied by the Main Works Contractor.
- (b) The Asset Manager must review the Main Works Contractor initial spares assessment and promptly notify the Principal's Representative of any concerns and provide the Principal's Representative with supporting analysis as required.
- (c) The Asset Manager must take receipt of the Initial Spare Parts and store in a secure storage area.

6.10. Key Competencies

During the WHT Delivery Phase, the Asset Manager must make available personnel with the following skills, experience, and credentials:

- (a) certified senior practitioner in asset management or equivalent;
- (b) expertise in the application of life cycle costing analysis;
- (c) experience in tunnel operations;
- (d) experience in the maintenance of tunnels and immersed tubes;

- (e) experience in driven tunnel and immersed tube tunnel design and construction;
- (f) experience and expertise in the design and support of tunnel mechanical and electrical systems;
- (g) experience and expertise in the design and support of tunnel ITS; and
- (h) experience and expertise in the design and support of tunnel control room systems.

7. Mobilisation Phase

7.1. General

- (a) The Asset Manager must undertake and complete SHT Mobilisation Phase and WHT Mobilisation Phase activities including, but not limited to:
 - (i) recruitment and onboarding of Asset Manager personnel in accordance with the SHT Transition Plan and WHT Mobilisation Plan;
 - (ii) acquire plant, systems, equipment, supplies, tools, consumables and other items necessary to undertake the AM Services in accordance with the SHT Transition Plan and WHT Mobilisation Plan;
 - (iii) conduct and complete training and personnel competency tests in accordance with the Training Management Plan, SHT Transition Plan and WHT Mobilisation Plan;
 - (iv) establish key contracts as described in section 16 of this document and all other agreements necessary for the AM Services;
 - (v) acquire all necessary approvals, permits and licences for the WHT Motorway;
 - (vi) receive Digital Engineering and Asset Information Artefacts from the Main Works Contractor;
 - (vii) receive Digital Engineering and Asset Information Artefacts from the Sydney Harbour Tunnel Company and the Principal as applicable;
 - (viii) purchase, configure and commission the Integrated Contract Management Systems;
 - (ix) purchase, configure and commission the Asset Information System;
 - (x) transfer all relevant SHT Motorway licences and subcontracts to the Asset Manager; and
 - (xi) all other activities identified in the SHT Transition Plan and WHT Mobilisation Plan.

7.2. Plans and Procedures

7.2.1. SHT Mobilisation Plan [Not to be Used]

7.2.2. SHT Transition Plan

- (a) The Asset Manager must develop a SHT Transition Plan as detailed in Appendix A

7.2.3. WHT Mobilisation Plan

- (a) The Asset Manager must develop a WHT Mobilisation Plan as detailed in Appendix A.

7.2.4. Review and Update of SHT Plans & Procedures

- (a) The Asset Manager must review and update existing SHT plans and procedures.
- (b) Where relevant and appropriate, updated SHT plans and procedures may be incorporated into the AM Services Plans as detailed in Appendix A.

7.3. Training and Competency

7.3.1. Training Management Plans

- (a) The Asset Manager must develop a Training Management Plan as detailed in Appendix A.

7.3.2. SHT Training

- (a) The Asset Manager must conduct and complete SHT training in accordance with the Training Management Plan to ensure Asset Manager personnel are competent to perform the AM Services as at the SHT Handover Date.
- (b) The Asset Manager must demonstrate Asset Manager personnel are competent to perform the AM Services prior to the SHT Handover Date including:
 - (i) day-to-day control room operations;
 - (ii) emergency response and management;
 - (iii) preventive and corrective maintenance; and
 - (iv) operation of legacy SHT operations, maintenance and management systems.

7.3.3. WHT Training

- (a) The Asset Manager must conduct and complete WHT training in accordance with the Training Management Plan to ensure Asset Manager personnel are competent to perform the AM Services.

- (b) The Asset Manager must program WHT training to ensure:
 - (i) personnel involved in Main Works test and commissioning activities have the necessary skills and training; and
 - (ii) personnel involved in Main Works operational readiness activities are trained and competent to perform their roles.
 - (iii) The Asset Manager must demonstrate Asset Manager personnel are competent to perform the AM Services prior to the Date of WHT Opening Completion including:
 - A. day-to-day control room operations;
 - B. emergency response and management; and
 - C. preventive and corrective maintenance.

7.4. Engineering and Asset Information

7.4.1. SHT Digital Engineering and Asset Information

- (a) The Asset Manager must manage the receipt and migration of the SHT Digital Engineering and Asset Information Artefacts to the Asset Information System.
- (b) The Asset Manager must complete the migration of SHT Digital Engineering and Asset Information Artefacts to the Asset Information System by the date specified in the SHT Transition Plans but no later than 24 months after the commencement of the Initial Asset Management Phase.
- (c) Until the migration of SHT Digital Engineering and Asset Information Artefacts is complete, the Asset Manager must:
 - (i) continue to operate the SHT Motorway legacy AIS;
 - (ii) purchase any licences and technical support required; and
 - (iii) ensure the information contained in in the SHT Motorway legacy AIS remains current and accurate.
- (d) The Asset Manager must ensure the SHT Digital Engineering and Asset Information Artefacts are updated following all major repair, refurbishment, rehabilitation, replacement and upgrade activities and are subsequently maintain and updated when required to ensure they remain accurate.
- (e) The Asset Manager must provide inputs into the TfNSW maintained SHT LCC Model during the first 24 months of the Initial Asset Management Phase including but not limited to:
 - A. resources required for the operation and maintenance of the SHT Motorway assets; and

B. asset information and quantities.

7.4.2. WHT Digital Engineering and Asset Information

- (a) The Asset Manager must manage the receipt and migration of the WHT Digital Engineering and Asset Information Artefacts to the Asset Information System.
- (b) The Asset Manager must complete the migration of WHT Digital Engineering and Asset Information Artefacts to the Asset Information System four weeks prior to the expected Date of WHT Opening Completion.
- (c) The Asset Manager must ensure the WHT Digital Engineering and Asset Information Artefacts are accurate and promptly updated when required.

8. Operations and Maintenance Services

8.1. Summary of Operations and Maintenance Services

- (a) During the Initial Asset Management Phase and the Asset Management Phase the Asset Manager must:
 - (i) maintain effective management systems;
 - (ii) operate the Motorways to achieve required safety, traffic management, asset management, sustainability and environmental planning outcomes and performance levels;
 - (iii) maintain the SHT Motorway, WHT Motorway and MCC / DRS facilities in accordance with relevant AM Services Plans including Asset Management Plans, Technical Maintenance Plans and Operations and Maintenance Manuals and achieve required performance levels;
 - (iv) undertake required compliance and reporting activities;
 - (v) manage cyber security;
 - (vi) carry out building management services for the MCC and DRS;
 - (vii) plan and coordinate works with the TMC and Adjacent Motorways operators; and
 - (viii) meet required sustainability / environmental standards and requirements in the Sustainability Management Plan and Environmental Management Plan.

8.2. Exclusions

8.2.1. Domain Tunnel

OFFICIAL

- (a) With respect to the Domain Tunnel, the following services are excluded from the Asset Manager's scope:
 - (i) preventive and corrective maintenance;
 - (ii) major repair and replacement of Domain Tunnel assets;
 - (iii) asset management of the Domain Tunnel.

8.2.2. Sydney Harbour Tunnel

- (a) With respect to the SHT Motorway, the following operations and maintenance services are excluded from the Asset Manager's scope:
 - (i) major repair and replacement of the SHT Motorway Limited Liability Assets.

8.2.3. Western Harbour Tunnel

- (a) With respect to the WHT Motorway, the following operations and maintenance services are excluded from the Asset Manager's scope:
 - (i) major repair and replacement of the WHT Motorway Limited Liability Assets.

8.2.4. Incident Response Services

- (a) Motorway incident response services provided by the Incident Response Services Entity are excluded from the Asset Manager's scope including:
 - (i) removal of disabled vehicles from the Motorways,
 - (ii) clean-up and removal of debris and minor spills resulting from a Motorway Incident from the Motorways;
 - (iii) vehicle tow/transport (up to 3 tonne);
 - (iv) heavy vehicle tow and salvage (3 tonne and over);
 - (v) rescue of injured animals;
 - (vi) management of pedestrians and trespassers;
 - (vii) heavy lift services (righting of overturned vehicles and removal of freight); and
 - (viii) roadside assistance.

8.3. Key Obligations

- (a) The Asset Manager must operate and maintain the SHT Motorway and operate the Domain Tunnel for the duration of the Initial Asset Management Phase and operate and maintain the SHT Motorway and WHT Motorway and operate the Domain Tunnel for the duration of the Asset Management Phase so that the Motorways:
- (i) are operated and maintained safely;
 - (ii) are operated and maintained such that any disruption and inconvenience to users of the Motorways, the public and Stakeholders is minimised;
 - (iii) are operated and maintained diligently, and that safety, function, condition, durability, reliability and aesthetics are considered in all aspects of the AM Services;
 - (iv) meet all specified performance requirements of this AM Deed, including but not limited to, reliability and availability, permitted closures, availability of equipment and systems such as the OMCS, incident response requirements, environmental restrictions, standards and other requirements of the Environmental Documents and as otherwise stated in this AM Deed;
 - (v) are operated and maintained in accordance with the AM Services Plans;
 - (vi) are operated and maintained to comply with the WHT SWTC with respect to the WHT Motorway;
 - (vii) remain compatible with the infrastructure and systems of the Sydney road network; and
 - (viii) are maintained and operated to ensure that when the Motorways are handed back in accordance with this AM Deed, the Handover Condition, Termination Handover Condition or NTP Handover Condition (as applicable) is satisfied.
- (b) The Asset Manager must periodically review risks and opportunities relevant to the Motorways and adjust the AM Services Plans as necessary to control risks and realise opportunities.

8.4. Management Systems

8.4.1. Integrated Contract Management System

- (a) The Asset Manager must develop, implement and maintain an Integrated Contract Management System (ICMS) that complies with the requirements detailed in Appendix I.

8.4.2. Work Health and Safety Management System

- (a) The Asset Manager must develop, implement and maintain an accredited Work Health and Safety System to ISO 45001 that complies with:
 - (i) Federal and NSW regulations;
 - (ii) the Codes and Standards; and
 - (iii) the WHS Management Plan.

8.4.3. Quality Management System

- (a) The Asset Manager must develop, implement and maintain an accredited Quality Management System to ISO 9001 that complies with:
 - (i) the Quality Management Plan; and
 - (ii) the Codes and Standards;

8.4.4. Environmental Management System

- (a) The Asset Manager must develop, implement and maintain an accredited Environmental Management System to ISO 14001 that complies with:
 - (i) the SHT Environmental Management Plan;
 - (ii) the WHT Environmental Management Plan;
 - (iii) Environmental Documents;
 - (iv) NSW Government Policies; and
 - (v) the Codes and Standards.

8.4.5. Not Used

8.4.6. Compliance

- (a) The Asset Manager must develop, implement and maintain a system to manage and report on compliance with obligations including:
 - (i) statutory obligations; and
 - (ii) contract obligations.
- (b) The Asset Manager must:
 - (i) whenever reasonably requested by the Principal, engage an independent auditor to audit compliance with;

- A. any AM Services Plans;
 - B. Key Performance Indicator recording and reporting;
 - C. WHS reporting;
- (ii) engage an independent auditor to audit compliance with the WHS Management Plan at least every three years;
 - (iii) permit representatives of the Principal to be present during audits; and
 - (iv) deliver copies of each audit report to the Principal within five Business Days of its completion.
- (c) In addition to the requirements of this AM Deed, the Asset Manager must permit the Principal to conduct monitoring and testing of any aspect of AM Services at any time.

8.4.7. Reporting & Notification

- (a) The Asset Manager must implement, maintain and comply with the reporting and notification requirements detailed in Appendix B.

8.4.8. Records Management

- (a) The Asset Manager must maintain a current and accurate record of all items specified in the Records Management Plan, and any other records which may be relevant to the performance of the AM Services.
- (b) The Asset Manager must keep all records of the AM Services for the duration of the AM Services. This requirement applies regardless of any records or copies of records which may be provided to the Principal.
- (c) All quality system records and all records relating to the AM Services must be freely accessible to the Principal and Asset Manager.

8.5. Operations

8.5.1. Control Room Operations

- (a) During the Initial Asset Management Phase the Asset Manager must:
 - (i) operate the SHT Motorway and the Domain Tunnel from the [REDACTED], and
 - (ii) maintain the SHT Motorway [REDACTED]
- (b) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) During the Asset Management Phase the Asset Manager must:

(i) operate the Motorways from the MCC, or, if the MCC is unavailable, from the DRS;

[REDACTED]

[REDACTED]

[REDACTED]

(iii) collaborate with cotenants to develop protocols and procedures to facilitate a safe and effective [REDACTED]

(d) The Asset Manager must monitor and control the Domain Tunnel devices identified in Appendix M and report any faults to the Principal and TfNSW.

8.5.2. Minimum Operating Equipment

(a) The Asset Manager must develop and maintain Minimum Operating Equipment criteria for the WHT Motorway, the SHT Motorway and the Domain Tunnel.

(b) The Asset Manager must immediately close the relevant Motorway when the Minimum Operating Equipment criteria are not met.

8.5.3. Incident Detection, Response, Clearance and Recovery

8.5.3.1. General

(a) Throughout the Initial Asset Management Phase and Asset Management Phase the Asset Manager must:

(i) develop, implement, review and improve protocols (in consultation with TfNSW and the Principal, the TMC, relevant Authorities and operators of Adjacent Motorways to deal with events and circumstances (including Motorway Incidents) that may credibly occur:

A. on the Motorways (including any impact on the adjacent Sydney road network);

B. on Adjacent Motorways; or

C. on the adjacent road network affecting the Motorways;

(ii) constantly monitor the Motorways and detect, identify and respond to conditions, events, circumstances and Motorway Incidents;

- (iii) maintain the required systems, resources, equipment and all other things necessary to meet the incident detection, response, clearance and recovery performance levels;
- (iv) establish and maintain a system to monitor and report detection times, response times, clearance times and recovery times for all Motorway Incidents;
- (v) minimise the adverse impacts of events and Motorway Incidents;
- (vi) comply with the traffic and transport requirements of Appendix C;
- (vii) develop and maintain the Traffic and Transport Management and Safety Plan in accordance with the requirements of Appendix A.

8.5.3.2. Incident Response Planning

- (a) Throughout the Initial Asset Management Phase and Asset Management Phase the Asset Manager must:
 - (i) proactively communicate, coordinate and cooperate with the Principal and TfNSW, TMC, Emergency Services, Authorities, operators of Adjacent Motorways, the Incident Response Services Entity and other Stakeholders on issues affecting the AM Services and to provide appropriate standards of operational safety and effective response to Motorway Incidents;
 - (ii) develop and maintain the Incident Response Plan in accordance with the requirements of Appendix A so that it:
 - A. satisfies the requirements of the Emergency Services and the TMC;
 - B. is compatible with and complements TfNSW and TMC incident response practices;
 - C. is compatible with and complements Adjacent Motorway incident response practices;
and
 - D. complies with this AM Deed; and
 - (iii) regularly review and improve incident management processes and documentation, including strategies, plans, protocols and procedures, considering lessons learned, changing circumstances, emerging technologies and Asset Management Best Practice.

8.5.3.3. Incident Response

- (a) Motorway Incidents must be responded to in accordance with the Incident Response Plan and relevant Incident Response Procedures.
- (b) Throughout the Initial Asset Management Phase and Asset Management Phase the Asset Manager must:

- (i) establish and maintain a system to monitor and accurately report detection times, response times, clearance times, recovery times and other Motorway Incident details for all Motorway Incidents;
- (ii) provide a Motorway Incident detection, identification and response capability to effectively reduce the likelihood and consequence of Secondary Motorway Incidents;
- (iii) achieve specified performance levels for Motorway Incident detection, response, clearance and recovery;
- (iv) provide timely advice to road users and other users of the Motorways about Motorway Incidents, Lane closures, diversions, hazards and travel conditions;
- (v) notify the Incident Response Services Entity of Motorway Incidents and provide 'fastest' route information;
- (vi) promptly notify Emergency Services, TMC and other relevant Authorities in accordance with the Incident Response Plan and relevant Incident Response Procedures.
- (vii) coordinate incident response activities with the Incident Response Services Entity and Adjacent Motorways operators;
- (viii) reopen Lanes closed in response to a Motorway Incident, as soon as it is safe to do so;
- (ix) not reopen Lanes closed by a relevant person or Authority until directed to do so by the relevant person or Authority;
- (x) have sufficient personnel, plant and equipment available to undertake traffic management in response to Motorway Incidents including closure of any Lanes on the Motorways or on roads adjacent to the Motorways;
- (xi) provide resources to assist Emergency Services to manage Motorway Incidents and respond to lawful directions from the NSW Police Force;
- (xii) prior to the reopening of Lanes make safe any damage resulting from a Motorway Incident to eliminate any safety hazards.
- (xiii) restore over height vehicle barriers;
- (xiv) establish and maintain stocks of sand and other materials, as detailed in the Incident Response Plan, to respond to Motorway Incidents; and
- (xv) provide all other Motorway Incident response services not provided by the Incident Response Services Entity.

- (c) Throughout the Initial Asset Management Phase and Asset Management Phase the Asset Manager must promptly notify all relevant Authorities, TfNSW and the Principal of any riotous, disorderly, offensive or improper conduct or unlawful act on the Motorways that would usually be reported to those Authorities;

8.5.3.4. Contact Services

- (a) Throughout the Initial Asset Management Phase and Asset Management Phase, the Asset Manager must:
 - (i) provide a 24 hour / seven day a week contact service;
 - (ii) respond to enquiries with respect to conditions on the Motorways including, but not limited to road conditions, blockages, maintenance, traffic conditions or variations to traffic speed; and
 - (iii) provide up to date contact details to the Principal and TfNSW, the TMC and other Authorities as identified in the Incident Response Plan;
 - (iv) provide information to the community in accordance with the requirements in Appendix C; and
 - (v) maintain a Sydney Harbour Tunnel website and Western Harbour Tunnel website that:
 - A. describes the Motorways;
 - B. provides details of upcoming maintenance activities and closures; and
 - C. provides contact details.

8.5.3.5. Roadside Assistance and Towing Services

- (a) Throughout the Initial Asset Management Phase and Asset Management Phase the Principal will:
 - (i) procure through the Incident Response Services Entity a roadside assistance capability including:
 - A. incident response vehicles fitted out with incident response equipment and materials;
 - B. incident response vehicles and/or tow trucks capable of towing/transporting a disabled vehicle of up to [REDACTED] without damage to the disabled vehicle; and
 - C. personnel who are capable of providing roadside services to motorists who have broken down including providing fuel, water, electric vehicle battery recharge, tyre changes, minor mechanical repairs and towing services.

8.5.3.6. Removal of Abandoned Vehicles

- (a) TfNSW will provide a designated area near the Motorways for impounded vehicles until reclaimed by the owner or disposed of by TfNSW. For the purposes of the Impounding Act 1993 (NSW), TfNSW will be the 'impounding officer' (as defined in the Impounding Act 1993) and will be responsible for all negotiations with vehicle owners and for the disposal of impounded vehicles.
- (b) Where a vehicle has been abandoned on the Motorway, the Incident Response Services Entity will remove that vehicle to the designated area, unless the nature of the vehicle is such that its removal to the designated area is impractical. In such cases, the Incident Response Services Entity will remove the vehicle to another safe location.

8.5.3.7. Clean-Up and Hazardous Materials

- (a) The Asset Manager must clean-up or otherwise assist the NSW Police Force, Fire and Rescue NSW or other Authority with the management of suspected hazardous material spillage event, where:
 - (i) the request originates from an appropriately delegated officer in charge of the operation;
 - (ii) the Asset Manager would be the most appropriate party under the circumstances to provide the assistance; and
 - (iii) the Asset Manager has taken all possible steps to ensure that the health and safety of its personnel will not be placed at risk.
- (b) Where the Asset Manager is uncertain as to whether the nature of any spilled substance poses a potential risk to its personnel, then the Asset Manager must seek confirmation from Emergency Services personnel. The Asset Manager must not involve its personnel in any clean-up activities that may place them at personal risk until the appropriate Authority has confirmed that they may safely proceed.
- (c) A hazardous material identification guide to assist in the identification of potentially hazardous materials and to outline initial field action where a potentially hazardous spill is encountered must be retained in all vehicles, and with all employee groups, involved in the performance of the AM Services.
- (d) Subject to provisions governing treatment and removal of hazardous materials resulting from any incident, and any legal limitations that may apply to removal of debris from the Motorways, the Asset Manager is responsible for prompt removal of all hazardous material from the Motorways during the Initial Asset Management Phase and Asset Management Phase.
- (e) Where a hazardous substance is involved, and a site has been rendered safe, the Asset Manager must implement appropriate clean-up procedures including:
 - (i) cleaning of the pavement and the removal of all spilled and residual materials;

- (ii) use of appropriate detergents for cleaning any residues such as oil and grease from the pavement, and thoroughly washing the pavement with water; and
 - (iii) ensuring that the surface of the pavement is not slippery to the extent that a safety hazard arises.
- (f) Without limiting the requirements of this AM Deed, all clean-up activities, must be carried out in an environmentally responsible manner.
- (g) Throughout the Initial Asset Management Phase and Asset Management Phase the Asset Manager must keep the Motorways in a clean and tidy condition and remove all litter and debris.

8.5.4. Engagement with Adjacent Motorways and Road Networks

8.5.4.1. General

- (a) The Asset Manager must engage with Adjacent Motorways operators and the TMC in accordance with the Interface Management Plan.

8.5.4.2. WestConnex Motorway

- (a) The Asset Manager must collaborate with the operator of the WestConnex Motorway on the development and update of Traffic Control Plans and operational procedures to effectively manage:
- (i) Motorway Incidents at the boundary of the WestConnex Motorway and the WHT Motorway;
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (iii) WHT Motorway tunnel, Carriageway and Lane closures;
 - (iv) WestConnex Motorway tunnel, Carriageway and Lane closures;
 - (v) WHT Motorway and / or WestConnex Motorway evacuation events; and
 - (vi) other credible scenarios requiring a coordinated response as identified in concept of operations documents and fire life and safety reports.

8.5.4.3. Beaches Link

- (a) The Asset Manager must collaborate with and support the contractor engaged for the design and/or construction of the Beaches Link Motorway and/or operator of the Beaches Link Motorway on the development and update of Traffic Control Plans and operational procedures to effectively manage:
- (i) Motorway Incidents at the boundary of the Beaches Link Motorway and the WHT Motorway;
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (iii) WHT Motorway tunnel, Carriageway and Lane closures;
 - (iv) Beaches Link Motorway tunnel, Carriageway and Lane closures;
 - (v) WHT Motorway and / or Beaches Link Motorway evacuation events; and
 - (vi) other credible scenarios requiring a coordinated incident response as identified in concept of operations documents and fire life and safety reports.
- (b) The Asset Manager must make all necessary changes to implement revised Traffic Control Plans and operational procedures necessary to effectively implement a coordinated incident response with the Beaches Link Motorway.

8.5.4.4. Warringah Freeway

- (a) The Asset Manager must collaborate with the operator of the Warringah Freeway on the development and update of Traffic Control Plans and operational procedures to effectively manage:
- (i) Motorway Incidents at the boundary of the Warringah Freeway, SHT Tunnel and the WHT Motorway;
 - (ii) WHT Motorway and SHT Motorway tunnel, Carriageway and Lane closures;
 - (iii) Warringah Freeway Carriageway and Lane closures;
 - (iv) other credible scenarios requiring a coordinated incident response.

8.5.4.5. Eastern Distributor Freeway

- (a) The Asset Manager must collaborate with the operator of the Eastern Distributor on the development and update of Traffic Control Plans and operational procedures to effectively manage:
 - (i) Motorway Incidents at the boundary of the Eastern Distributor and the Domain Tunnel;
 - (ii) Domain Tunnel and SHT Motorway tunnel, Carriageway and Lane closures;
 - (iii) Eastern Distributor Carriageway and Lane closures; and
 - (iv) other credible scenarios requiring a coordinated incident response.

8.5.5. Emergency and Threat Management

- (a) Emergencies and threats must be managed in accordance with the Emergency and Threat Management Plan.

- (b) [REDACTED]

8.5.6. Emergency Services

- (a) The Asset Manager must regularly undertake familiarisation tours of Motorways and training on relevant AM Services Plans [REDACTED]
- (b) The Asset Manager must consult with Emergency Services on development and update of:
 - (i) the WHT Operations Readiness Evaluation Plan;
 - (ii) the Incident Response Plan
 - (iii) the Emergency and Threat Management Plan; and
 - (iv) Interface Management Plan;
- (c) The Asset Manager must consult with Emergency Services on the planning and conduct of road and tunnel exercises [REDACTED] and to test the Incident Response Plan, Emergency and Threat Management Plan.
- (d) The Asset Manager must support the maintenance and calibration of safety cameras located on the Motorways.

8.5.7. Environment and Sustainability

- (a) The Asset Manager must undertake continuous in tunnel, in stack and ambient air quality monitoring and reporting as required by the Environmental Documents and WHT SWTC, including monitoring throughout all tunnels, all exhaust stacks and outside any tunnels in the vicinity of the SHT Motorway and WHT Motorway exhaust stacks and tunnel portals. The Asset Manager must ensure that:
- (i) all air quality monitoring and reporting is sufficiently comprehensive to ensure that:
 - A. air quality associated with a full range of atmospheric conditions can be reliably established;
 - B. in tunnel air quality levels can be accurately determined along the length of the tunnels and near portals, as required; and
 - C. the level of compliance with the requirements of the Environmental Documents and WHT SWTC can be accurately established;
 - (ii) all air quality monitoring equipment is operated and maintained in accordance with recognised Australian Standards and the other requirements of the AM Deed; and
 - (iii) all reporting of air quality monitoring is carried out in accordance with the Environmental Documents.
- (b) Throughout the Initial Asset Management Phase and the Asset Management Phase, the Asset Manager must:
- (i) undertake AM Services in accordance with the sustainability requirements in Appendix E (Sustainability Requirements);
 - (ii) comply with the requirements of the Environmental Documents to the extent specified, in this AM Deed;
 - (iii) undertake the AM Services in accordance with the Sustainability Management Plan;
 - (iv) take all reasonable steps to minimise electrical energy consumption of the Motorway;
 - (v) ensure that all water to be discharged from the Motorways is managed, monitored, and measured in compliance with the Environmental Documents, NSW Government Policies, licence agreements, WHT SWTC, Motorways design and Sydney Water's requirements;
 - (vi) measure incidental ground water intake in accordance with the Environmental Documents and report the results to DPIE Water annually; and
 - (vii) appoint a representative on the WHT Motorway Air Quality Community Consultative Committee.

8.5.8. Road Safety Audits

- (a) The Asset Manager must arrange for independent road safety audits to be conducted in accordance with TfNSW Guidelines for Road Safety Audit Practices:
 - (i) at two year intervals throughout the Initial Asset Management Phase and the Asset Management Phase; and
 - (ii) following any Motorway Incident that results in a casualty.
- (b) Road safety audits must be carried out by a team consisting of a lead auditor and a least one other member who is experienced in traffic management. The lead auditor must be considered by the Institute of Public Works Engineering Australia Ltd (NSW Division) to be a level 3 auditor.
- (c) TfNSW and the Principal must be invited to attend and observe all road safety audits undertaken by the Asset Manager.
- (d) The Asset Manager must consider and respond to the issues identified by the independent road safety audits and to the issues identified by any road safety audits which may be undertaken by the Principal. Issues identified in road safety audits are non-conformities which must be addressed by the Asset Manager in accordance with the Quality Management Plan.
- (e) Copies of all independent road safety audits must be issued to TfNSW and the Principal within 20 Business Days of the audit report being completed.

8.5.9. Traffic Control Plans

- (a) Without limiting the requirements of this AM Deed, all AM Services during the Initial Asset Management Phase and Asset Management Phase, except those undertaken in response to a Motorway Incident, must be planned to avoid delay or detours that will inconvenience motorists, pedal cyclists, pedestrians; or will interfere with traffic during periods of heavy traffic flow.
- (b) All traffic management for maintenance activities must be carried out in accordance with Traffic Control Plans that have been approved by the TMC.
- (c) All Traffic Control Plans must be submitted to the TMC for approval with each application for a Road Occupancy Licence and must be regularly reviewed and modified in conjunction with TfNSW traffic management personnel and Emergency Services as operating experience accumulates. Such reviews must be arranged by the Asset Manager and coordinated with the Principal's Representative or its nominees.
- (d) All Traffic Control Plans must be developed on the basis of the following documents and in the order of precedence listed below:
 - (i) TfNSW D&C Specification G10, IC-CD-G10, (Traffic Management);

OFFICIAL

- (ii) AS 1742.3 (Manual of uniform traffic control devices – Part 3: Traffic control for works on roads);
 - (iii) TfNSW Traffic Control at Work Sites Technical Manual; and
 - (iv) all other relevant current TfNSW guidelines and strategies.
- (e) The Asset Manager must advise the TMC immediately of any matter within its knowledge that is likely to affect, or is affecting, the free flow of traffic during the Initial Asset Management Phase and Asset Management Phase. This includes:
- (i) unusual traffic congestion;
 - (ii) any action the Asset Manager proposes to take in relation to the AM Services;
 - (iii) any unplanned Lane, road, footpath or cycleway closure;
 - (iv) any incident on the Motorways; and
 - (v) any action by any third party.

8.5.10. Road Occupancy Licensing

- (a) The Asset Manager must obtain a Road Occupancy Licence from the TMC prior to occupying any part of the Motorways for the purposes performing any part of the AM Services excluding responding to a Motorway Incident.
- (b) Generally, Road Occupancy Licences will not be granted for times between 6.00am and 10.00am and 3.00pm and 7.00pm on weekdays, and may not be granted during special events or other known traffic peaks.
- (c) The Asset Manager must obtain approval from the TMC and any relevant Authority prior to occupying, modifying or affecting any roads, footpaths or cycleways that are open to the public.
- (d) Road Occupancy Licences must be obtained in accordance with the guidelines in Appendix J.

8.5.11. Not Used

8.5.12. Works Planning, Coordination and Approval

- (a) The Asset Manager must develop and maintain a management system for assessing and approving works on the SHT Motorway and WHT Motorway.
- (b) The Asset Manager must consult with Adjacent Motorways operators on the planning and coordination of works requiring Lane and Carriageway closures and apply a 'best for network' principle when planning Lane and Carriageway closures.

8.5.13. Key Competencies and Nominated Personnel

8.5.13.1. Control Room Operators

- (a) The Asset Manager must ensure control room operators:
 - (i) have successfully completed a certificate IV in traffic operations or equivalent certified course;
 - (ii) have successfully completed OMCS training and can competently operate the OMCS for the Motorways;
 - (iii) periodically participate in desktop, simulated and field exercises relevant to their duties; and
 - (iv) are periodically examined and certified as competent to perform their duties.

8.5.13.2. Traffic Controllers

- (a) The Asset Manager must ensure that all persons who are required to perform the duties of a traffic controller undertake the relevant training packages and are examined and certified as competent to perform their respective traffic controller duties including:
 - (i) Package T89.4 'Guidelines for the Selection of Traffic Controllers' or equivalent certified course; and
 - (ii) Package T89.5 'So You Think You Are Going to be a Traffic Controller?' or equivalent certified course.

8.5.13.3. Operations Manager

- (a) The Asset Manager must appoint a suitably qualified Operations Manager for the Initial Asset Management Phase and the Asset Management Phase.
- (b) The Operations Manager must have demonstrated competence and suitable experience in road and tunnel operations.

8.5.13.4. Road and Tunnel Safety Officer

- (a) The Asset Manager must appoint a suitably qualified Road and Tunnel Safety Officer for the Initial Asset Management Phase and the Asset Management Phase. The Road and Tunnel Safety Officer must have authority and responsibility for issues relating to road and tunnel safety and must review the outcomes of all road safety audits and road and tunnel exercises and ensure that identified issues are addressed.
- (b) The Road and Tunnel Safety Officer must:
 - (i) report directly to executive management;

- (ii) have demonstrated competence and suitable experience in road and tunnel operations; and
 - (iii) have accountability for the minimum operating condition criteria for the Motorways.
- (c) The Road and Tunnel Safety Officer must:
- (i) take part in the planning and execution of road and tunnel exercises;
 - (ii) review:
 - A. the Main Works Contractor Operational Readiness Evaluation Plan;
 - B. the WHT Operations Readiness Evaluation Plan;
 - C. the Incident Response Plan;
 - D. the Emergency and Threat Management Plan;
 - E. Interface Management Plan; and
 - F. Traffic Control Plans;
 - (iii) take part in the review and evaluation of Motorway Incidents that result in one or more casualties or material damage to the Motorways; and
 - (iv) regularly verify Asset Manager personnel are competent to conduct operations and manage Motorway Incidents and emergencies.

8.5.13.5. Traffic Representative

- (a) The Asset Manager must nominate a Traffic Representative who has authority and responsibility for issues relating to traffic management, including liaison with the TMC, throughout the Initial Asset Management Phase and Asset Management Phase.

8.6. Maintenance

8.6.1. General

- (a) The SHT Motorway must be maintained to ensure the SHT Motorway continues to function and perform to at least the same standard as at the commencement of the Initial Asset Management Phase.
- (b) The WHT Motorway must be maintained to ensure the WHT Motorway continues to comply with the WHT SWTC.
- (c) The Asset Manager is responsible for all traffic management required to support maintenance of the WHT Motorway and SHT Motorway.

OFFICIAL

8.6.2. Preventive Maintenance

- (a) Preventive Maintenance is those parts of the AM Services undertaken to maintain assets to the required standards and to ensure the safe and continuous operation of the Motorways in accordance with this AM Deed.
- (b) Preventive Maintenance must be conducted in accordance with the AM Services Plans, including the Technical Maintenance Plans, Operations and Maintenance Manuals, Annual Maintenance Plan and relevant Codes and Standards.
- (c) The Asset Manager must carry out Preventive Maintenance throughout the Initial Asset Management Phase and Asset Management Phase to ensure compliance with this AM Deed which includes, but is not limited to:
 - (i) inspection of assets in accordance with section 8.6.3 of this AM Services Specification;
 - (ii) asset condition monitoring in accordance with section 8.6.4 of this AM Services Specification;
 - (iii) any activity which prevents deterioration or future failure of any asset, or part thereof, including replacement, refurbishment and repair of asset items and asset sub-items;
 - (iv) cleaning, sweeping, washing and generally keeping the Motorways and all assets in a clean and tidy condition and removing all rubbish, waste, spillage, debris, including incident debris, litter, removal of graffiti, posters and other advertising material;
 - (v) clearing debris from assets, including but not limited to stormwater drainage systems, drainage pits, pipes culverts and scuppers;
 - (vi) landscaping and vegetation control, including but not limited to weeding, pruning, clearing, mowing, dead tree removal, fertilising and watering;
 - (vii) lubrication and adjustment of assets;
 - (viii) corrosion management;
 - (ix) checking, measuring, testing, trialling and running assets;
 - (x) calibration of assets and test equipment;
 - (xi) sampling and analysis; and
 - (xii) all other regular activities required to ensure the safety, reliability and functionality of the SHT Motorways and WHT Motorways.

- (d) The character and frequency of Preventive Maintenance must ensure that the assets within the Motorways remain functional, reliable and comply with the Technical Maintenance Plans, AM Services Plans, Operations and Maintenance Manuals, Appendix K and this AM Deed.
- (e) The Asset Manager must develop and improve Preventive Maintenance strategies, processes and resourcing throughout the Initial Asset Management Phase and Asset Management Phase, to reduce the likelihood and impact of unexpected failures of assets within the SHT Motorway and WHT Motorway. Such strategies must be included in the AM Services Plans.
- (f) The conduct of all Preventive Maintenance must be recorded in the AIS within 48 hours of the activity.

8.6.3. Inspections

- (a) The Asset Manager must inspect the assets in accordance with the AM Services Plans, including the Annual Maintenance Plan, Technical Maintenance Plans, Operations and Maintenance Manuals, AM Deed, Appendix K and Asset Management Best Practice, to determine their condition, identify faults and Defects and assist in the planning of the maintenance aspects of the AM Services.
- (b) Without limiting the Asset Manager's obligations within this AM Deed, the Asset Manager must:
 - (i) coordinate daily safety inspections, equipment checks, monitoring activities and corrective action notifications for all assets within the SHT Motorway and WHT Motorway;
 - (ii) ascertain and monitor the condition of the assets and report the condition to the Principal;
 - (iii) carry out routine inspections and maintenance on a regular scheduled basis;
 - (iv) conduct asset inspections for the purposes of, but not limited to:
 - A. determining the state of repair of assets within the SHT Motorway and WHT Motorway;
 - B. identifying any Corrective Maintenance requirements; and
 - C. identifying any Defects or potential Defects in assets within the SHT Motorway and WHT Motorway;
 - (v) carry out ground and infrastructure monitoring in accordance with the requirements of Appendix N and advise the Principal's Representative immediately of any actual effects that are inconsistent with the Predicted Effects;
 - (vi) promptly notify the Principal's Representative of any Defects including material damage and disrepair detected in assets within the SHT Motorway and WHT Motorway;
 - (vii) only allow suitably experienced and trained personnel to undertake the inspections; and

OFFICIAL

(viii) must identify and respond appropriately to issues which have the potential to adversely affect the safe flow of traffic on the Motorways or adjacent Sydney road network or result in a failure to comply with Approvals or Law.

(c) The conduct and results of all inspections must be recorded in the AIS within 48 hours of the inspection, together with the plans to rectify or avoid any Defects (or potential Defects).

8.6.4. Condition Monitoring

(a) Condition monitoring enables, and includes, analysis of trends in performance and reliability of assets referable to location and system.

(b) The Asset Manager must undertake condition monitoring of all Assets in accordance with the AM Services Plans, Technical Maintenance Plans, Operations and Maintenance Manuals, AM Deed and Asset Management Best Practice, in order to:

(i) identify and prevent as far as practicable, future asset failures,

(ii) provide objective assessment of asset condition and to enable informed decisions to be made relating to the intervention for inspection and all forms of maintenance, repair and replacement or refurbishment; and

(iii) enable analysis of trends in performance and reliability of assets referable to location and system.

(c) Condition monitoring is to include (as applicable for each asset):

(i) sampling and analysis;

(ii) in situ testing;

(iii) diagnostic checks;

(iv) dimensional checks; and

(v) measurement of actual performance.

(d) The method and frequency of condition monitoring and the minimum performance at which intervention is required must be in accordance with the AM Services Plans, including the Technical Maintenance Plans, during the Initial Asset Management Phase and Asset Management Phase.

(e) The outcomes of condition monitoring must be recorded in the AIS within 24 hours.

8.6.5. Corrective Maintenance

(a) Corrective Maintenance are activities required to:

- (i) carry out repairs due to damage leading to failure or the likelihood of future sudden, partial or complete failure;
 - (ii) rectify Defects;
 - (iii) repair other unexpected failures and deterioration; and
 - (iv) return assets back to an operational condition.
- (b) The Asset Manager must carry out Corrective Maintenance to any part of the SHT Motorway and WHT Motorway that does not satisfy the requirements of this AM Deed or is required to be replaced, repaired, refurbished or rehabilitated to ensure continued compliance with this AM Deed.
- (c) Corrective Maintenance must be conducted and completed within specified times in accordance with the AM Services Plans, including the Technical Maintenance Plans, Operations and Maintenance Manuals and relevant Codes and Standards.
- (d) The Asset Manager must undertake Corrective Maintenance, to the extent possible, prior to the failure of an asset or deterioration in asset functionality that would cause an adverse impact on:
- (i) the functionality of that asset and its ability to contribute to the operation of the SHT Motorway and WHT Motorway;
 - (ii) safety of SHT Motorway and WHT Motorway users, the public, persons carrying out the AM Services, or other Stakeholders;
 - (iii) amenity or travel time of users of the SHT Motorway and WHT Motorway; or
 - (iv) compliance with Approvals and Law.
- (e) As part of Corrective Maintenance, the Asset Manager must repair or otherwise install appropriate measures to prevent water from dripping or flowing onto metallic assets within tunnels (except to the extent agreed within the Technical Maintenance Plans), or onto or over road pavements, walkways and egress passages within tunnels or underpasses.
- (f) The Asset Manager must categorise a Defect requiring Corrective Maintenance in accordance with the defect rating table below.

Table 2 - Defect Rating

Defect Type	Defect Rating	Description
Safety Critical	5	Critical Defect that requires immediate attendance as a critical condition has occurred that affects safety of the Motorways.
Critical	4	Critical Defect that requires immediate attendance as a critical condition has occurred that could affect operation and / or availability of the Motorways.

OFFICIAL

Warning	3	Defect that requires attendance to prevent a critical Defect occurring in the near future. If not rectified, the Defect could lead to loss of service or damage to plant and equipment.
Moderate	2	Defect that requires attendance at next planned maintenance event. Defect is not critical.
Minor	1	Defect is minor and can be attended in the future planned closure.

- (g) Where a Main Works Defect occurs, which has been categorised as a defect rating of 1, 2 or 3 the Asset Manager must immediately advise the Principal's Representative.
- (h) Where a Defect occurs which has been categorised as a 4 or 5 category Defect, the Asset Manager must immediately carry out a repair or temporary fix to allow the SHT Motorway and WHT Motorway to be operated in accordance with this AM Deed and advise the Principal's Representative.
- (i) The conduct and result of all Corrective Maintenance must be recorded in the AIS within 48 hours of the activity including for each Defect;
 - (i) a unique number;
 - (ii) the defect rating in accordance with Table 2;
 - (iii) the response time which is the time between the identification of the Defect and the completion of the appropriate response;
 - (iv) the relevant Technical Maintenance Plan reference that states the required intervention level and response time.

8.6.6. Spares Management & Replenishment

- (a) The Asset Manager is responsible for the management, purchase, replenishment and storage of spares and consumables.

8.6.6.2. Spare Parts Management

- (a) The Principal will provide the SHT Initial Spare Parts to the Asset Manager prior to the commencement of the Initial Asset Management Phase.
- (b) The Principal will provide the WHT Initial Spare Parts to the Asset Manager, prior to commencement of the Asset Management Phase.
- (c) In addition to the SHT Initial Spare Parts and WHT Initial Spare Parts, the Asset Manager must purchase Spare Parts as necessary to comply with this AM Deed.

- (d) The Asset Manager must replenish the SHT Initial Spare Parts and WHT Initial Spare Parts, at its own cost, as items are used or become unserviceable.
- (e) The Asset Manager must manage the custody, use, storage, replacement, serviceability and security of the Spare Parts.
- (f) The Asset Manager must ensure Spare Parts are stored in appropriate conditions and with consideration of manufacturer's recommendations.
- (g) Where a Spare Part is used on Reimbursable Services, the cost of replacement Spare Parts will be included in the amount paid to the Asset Manager for those Reimbursable Services.
- (h) Any change to the SHT Initial Spare Parts and WHT Initial Spare Parts inventory must be approved by the Principal's Representative in writing.
- (i) An accurate inventory of Spare Parts must be maintained on the AIS and changes recorded within 10 Business Days of a change in the Spare Parts inventory.

8.6.7. Operations and Maintenance Manual Requirements

- (a) The Asset Manager must maintain and keep updated Operations and Maintenance Manuals that provide detailed instructions on how to service and repair key assets on the SHT Motorway and WHT Motorway including but not limited to:
 - (i) high voltage electrical distribution systems;
 - (ii) low voltage electrical distribution systems;
 - (iii) ventilation systems (e.g. jet fans, axial fans, dampers, pressurisation fans);
 - (iv) heating, ventilation and air conditioning systems;
 - (v) uninterruptable power supplies;
 - (vi) backup / alternative power supplies;
 - (vii) drainage and water treatment systems;
 - (viii) deluge systems;
 - (ix) fire and life safety systems;
 - (x) radio rebroadcast system;
 - (xi) public address systems;
 - (xii) tunnel and road lighting;

(xiii) exit and directional lighting; and

(xiv) other assets on the SHT Motorway and WHT Motorway maintained directly by Asset Manager employees.

8.6.8. Utility Service, Authority and Third Party Works

- (a) The Asset Manager must manage and supervise any work to be performed by a Utility Service owner, Authority or other approved third party on the SHT Motorway and WHT Motorway during the Initial Asset Management Phase and the Asset Management Phase. The obligations of the Asset Manager is unaffected by work undertaken by or on behalf of a Utility Service owner, Authority or other approved third party.
- (b) For any third party work managed by the Asset Manager during the Initial Asset Management Phase and the Asset Management Phase, the Asset Manager must:
 - (i) issue a specification for the third party works;
 - (ii) supervise the restoration of any assets on the SHT Motorway and WHT Motorway affected by the third party works;
 - (iii) make allowance for all provisions necessary to minimise traffic impacts and inspection frequency; and
 - (iv) make allowance for methods to limit pavement subsidence or other damage to the SHT Motorway and WHT Motorway.
- (c) In the case of an incident involving any Utility Service owner or Authority, the responsible Utility Service owner or Authority may affect the necessary repairs without prior advice being given to the Principal.

8.6.9. Air Quality Monitoring Equipment

- (a) The Asset Manager must maintain all air quality monitoring equipment in accordance with the Environmental Documents and Australian Standards.
- (b) Air quality monitoring equipment maintenance must be undertaken by an organisation accredited for this purpose by the National Association of Testing Authorities (NATA) (based in Australia) and approved by TfNSW.
- (c) The Asset Manager must assure the quality of all the monitoring results through a NATA accredited process prior to the data being considered as a basis for compliance and/or auditing purposes.

8.6.10. Workforce Skills, Diversity and Industry Participation

OFFICIAL

- (a) The Asset Manager must comply with the Workforce Skills, Diversity and Industry Participation Plan.

8.6.11. Subcontractor Qualifications and Credentials

- (a) The Asset Manager must develop and maintain a list of mandatory subcontractor qualifications and credentials applicable to subcontractor activities.
- (b) The Asset Manager must develop and maintain a system to periodically verify subcontractor qualifications and credentials.

8.6.12. Not Used

8.6.13. Key Competencies and Nominated Personnel

8.6.13.1. Maintenance Manager

- (a) The Asset Manager must appoint a suitably qualified Maintenance Manager for the Initial Asset Management Phase and the Asset Management Phase.
- (b) The Maintenance Manager must have a minimum of 15 years' experience in road and tunnel maintenance management.

8.7. Building Management Services

8.7.1. General

- (a) [REDACTED]
- (b) The Asset Manager must:
 - (i) provide building management services for the MCC and DRS;
 - (ii) undertake periodic refurbishment of the MCC and DRS in accordance with the WHT Forecast Major Repair and Replacement plan (for MCC) and SHT Forecast Major Repair and Replacement plan (for DRS);
 - (iii) [REDACTED]
 - (iv) [REDACTED]

8.7.2. Motorways Control Centre

- (a) The Asset Manager is responsible for all MCC building management services including:

- (i) internal and external cleaning;
- (ii) waste and rubbish removal;
- (iii) utilities;
- (iv) plumbing and drainage;
- (v) landscaping;
- (vi) heating, ventilation and air conditioning systems;
- (vii) electrical systems and lighting;
- (viii) fire detection and suppression systems;
- (ix) furniture, fixtures and floor coverings;
- (x) computer room air conditioning systems;



(xii) internet and telephony services.

(b) The Asset Manager is not responsible for:

- (i) TfNSW data communications used for Warringah Freeway operations;
- (ii) Beaches Link Motorway data communications for motorway operations;
- (iii) TMC control room workstations; or
- (iv) Beaches Link Motorway control room workstations.

8.7.3. Disaster Recovery Site

(a) The Asset Manager is responsible for all DRS building management services including:

- (i) internal and external cleaning;
- (ii) waste and rubbish removal;
- (iii) utilities;
- (iv) plumbing and drainage;
- (v) landscaping;
- (vi) heating, ventilation and air conditioning systems;

- (vii) electrical systems and lighting;
- (viii) fire detection and suppression systems;
- (ix) furniture, fixtures and floor coverings;
- (x) computer room air conditioning systems;

[REDACTED]

- (xii) internet and telephony services.

(b) The Asset Manager is not responsible for:

- (i) [REDACTED]
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) [REDACTED]

8.8. Cyber Security

8.8.1. Cyber Security Planning & Management

(a) The Asset Manager must:

- (i) manage cyber security for the Motorways;
- (ii) respond to cyber security threats and address potential risks; and
- (iii) undertake cyber security activities in accordance with the Cyber Security Plan.

(b) The Asset Manager must develop and maintain a Cyber Security Plan.

(c) The minimum requirements for the Cyber Security Plan are detailed in Appendix A.

8.8.2. Audits and Testing

(a) The Asset Manager must periodically conduct penetration tests using a reputable third party [REDACTED]

[REDACTED]

8.9. Business Continuity and Disaster Recovery

8.9.1. Plans

- (a) The Asset Manager must prepare a Business Continuity Management Plan for the SHT Motorway and WHT Motorway.
- (b) The Asset Manager must prepare a Disaster Recovery Plan for the SHT Motorway and WHT Motorway.
- (c) The minimum requirements for the Business Continuity Management Plan and Disaster Recovery Plan are detailed in Appendix A.

8.9.2. Periodic Tests

- (a) The Asset Manager must periodically test business continuity plans and procedures in accordance with the Business Continuity Plan [REDACTED]
- (b) The Asset Manager must periodically test disaster recovery plans and procedures in accordance with the Disaster Recovery Plan [REDACTED]
- (c) SHT Motorway disaster recovery plans and procedures must be tested [REDACTED]
[REDACTED]
- (d) The Asset Manager must demonstrate that the SHT Motorway and the WHT Motorway can be operated from the DRS [REDACTED]
- (e) During the Initial Asset Management Phase, the Asset Manager must demonstrate the disaster recovery capability [REDACTED]
[REDACTED]

8.10. Community Relations and Stakeholder Management

8.10.1. Community Relations

- (a) The Asset Manager must comply with:
 - (i) the community engagement requirements detailed in Appendix D; and
 - (ii) the Community and Stakeholder Plan.

8.10.2. Not Used

9. Asset Management Services

9.1. Summary of Asset Management Services

- (a) The Asset Manager must:

- (i) Develop, maintain and comply with Asset Management Plans for the SHT Motorway, WHT Motorway and MCC/DRS facilities;
- (ii) Develop, maintain and comply with Technical Maintenance Plans for the SHT Motorway, WHT Motorway and MCC/DRS facilities;
- (iii) maintain a forecast major repair, refurbishment, rehabilitation and replacement program and budget for the SHT Motorways, WHT Motorway and MCC/DRS facilities; and
- (iv) perform and manage major repair, refurbishment, rehabilitation and replacement activities on the SHT Motorway, WHT Motorway and MCC/DRS facilities.

9.2. Asset Management Plans

- (a) The Asset Management Plans must comply with the minimum requirements in Appendix A.
- (b) The Asset Management Plans must:
 - (i) cover all Assets;
 - (ii) otherwise comply with the requirements of this deed; and
 - (iii) include the Annual Maintenance Plan, which must:
 - A. describe the AM Services for the following 3 year period;
 - B. be of sufficient detail to facilitate effective monitoring of AM Services;
 - C. consider all works required to ensure the Handover Condition is achieved.

9.3. Technical Maintenance Plans (Code of Maintenance Standards)

- (a) The Technical Maintenance Plans must comply with the minimum requirements in Appendix A.

9.4. Major Repair and Replacement

9.4.1. Major Repair and Replacement Expenditure Forecast

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■

[REDACTED]

[REDACTED]

[REDACTED]

■

[REDACTED]

[REDACTED]

9.4.2. Major Repair and Replacement Accountability

- (a) The Asset Manager must schedule and carry out the major repair, refurbishment, rehabilitation and replacement of assets at such times as is required by the Asset Management Plans during the Initial Asset Management Phase and Asset Management Phase.
- (b) All major repair, refurbishment, rehabilitation and replacement activities must be undertaken on a "like-for-like" basis, so that the functionality, performance, amenity and utility of the new assets or any other parts and components is equivalent to or exceeds the functionality, performance, amenity and utility of the replaced or refurbished asset and meets all requirements under this deed and all requirements under the Main Works SWTCs with respect to the WHT Motorway, AM Services Plans and applicable Law and Regulations.
- (c) When an Asset is replaced whether by replacement, refurbishment, repair or any other form of maintenance, it must be replaced with an Asset having a Design Life that is equivalent to or greater than the Specified Design Life of the Asset being replaced.
- (d) The Asset Manager must procure the engineering capability necessary to plan, design, undertake, test and commission major repair, refurbishment, rehabilitation and replacement of an Asset consistent with good industry practice.

9.4.3. Exclusions

9.4.3.1. Sydney Harbour Tunnel Limited Liability Assets

- (a) The Asset Manager is not required to carry out the major repair, refurbishment or rehabilitation of SHT Motorway Limited Liability Assets as a Core Service.
- (b) For the SHT Motorway Limited Liability Assets, the Asset Manager must undertake the maintenance services described in section 8.6, with the following exceptions:
 - (i) the obligations in sections 8.6.2 and 8.6.3 are limited to the Preventative Maintenance and inspection activities described in the SHT Technical Maintenance Plans, where those Technical Maintenance Plans must, as a minimum, include the maintenance activities as outlined in Appendix P; and
 - (ii) the obligations in section 8.6.5 are limited to the Corrective Maintenance activities described in the SHT Technical Maintenance Plans, where those Technical Maintenance Plans must, as a minimum, include the maintenance activities as outlined in Appendix P.
- (c) A minimum of 3 months prior to the inspection of any SHT Motorway Limited Liability Asset the Asset Manager must notify the Principal's Representative with respect to:
 - (i) the detailed timing and location of the proposed inspection;
 - (ii) the method of inspection to be adopted (as related to the associated Technical Maintenance Plan); and
 - (iii) the personnel to undertake the inspection, including details of any subcontractors.
- (d) The Asset Manager must immediately notify the Principal's Representative of any Defects identified on the SHT Motorway Limited Liability Assets, and notify the Principal's Representative as soon as practicable of the Corrective Maintenance tasks to be performed to rectify the Defect.

9.4.3.2. Western Harbour Tunnel Limited Liability Assets

- (a) The Asset Manager is not required carry out the major repair, refurbishment or rehabilitation of WHT Motorway Limited Liability Assets as a Core Service.
- (b) For the WHT Motorway Limited Liability Assets, the Asset Manager must undertake the maintenance services described in section 8.6, with the following exceptions:
 - (i) the obligations in sections 8.6.2 and 8.6.3 are limited to the Preventative Maintenance and inspection activities described in the WHT Technical Maintenance Plans, where those Technical Maintenance Plans must, as a minimum, include the maintenance activities as outlined in Appendix P; and
 - (ii) the obligations in section 8.6.5 are limited to the Corrective Maintenance activities described in the WHT Technical Maintenance Plans, where those Technical Maintenance Plans must, as a minimum, include the maintenance activities as outlined in Appendix P.

OFFICIAL

- (c) A minimum of 3 months prior to the inspection of any WHT Motorway Limited Liability Asset the Asset Manager must notify the Principal's Representative with respect to:
 - (i) the detailed timing and location of the proposed inspection;
 - (ii) the method of inspection to be adopted (as related to the associated Technical Maintenance Plan); and
 - (iii) the personnel to undertake the inspection, including details of any subcontractors.
- (d) The Asset Manager must immediately notify the Principal's Representative of any Defects identified on the WHT Motorway Limited Liability Assets, and notify the Principal's Representative as soon as practicable of the corrective maintenance tasks to be performed to rectify the Defect.

9.4.3.3. Not Used

9.5. Engineering Management

9.5.1. Authorised Engineering Organisation

- (a) The Asset Manager must qualify as an Authorised Engineering Organisation within 12 months of being notified by the Principal that it is required to qualify as an Authorised Engineering Organisation.
- (b) The Asset Manager must retain its Authorised Engineering Organisation qualification for the remaining duration of the AM Services.

9.5.2. Engineering Decisions

- (a) The Asset Manager must develop, maintain and comply with an Engineering Decision process.
- (b) The Engineering Decision process must:
 - (i) identify who is authorised to make Engineering Decisions;
 - (ii) provide a framework for rating the significance of an Engineering Decision;
 - (iii) include engineering review guidelines for individuals authorised to make Engineering Decisions; and
 - (iv) detail how Engineering Decisions are recorded.

9.5.3. Configuration Management

OFFICIAL

- (a) The Asset Manager must develop, maintain and comply with Configuration Management process and procedures.
- (b) The Configuration Management process and procedures must:
 - (i) describe how the configuration of assets on the SHT Motorway and WHT Motorway will be recorded;
 - (ii) describe how changes to the configuration of assets on the SHT Motorway and WHT Motorway will be proposed, approved and implemented; and
 - (iii) be consistent with configuration management standards and guidelines published by TfNSW
- (c) The Configuration Management processes must be documented in the Asset Management Plan or a Configuration Management sub-plan to the Asset Management Plan.

9.5.4. Reporting of Engineering Decisions and Configuration Changes

- (a) TfNSW and the Principal must be provided with the details of all Engineering Decisions and configuration changes within 30 calendar days.
- (b) The Asset Manager must respond to all queries raised by TfNSW or the Principal with respect to Engineering Decisions and configuration changes within 10 Business Days.

9.6. Not Used

9.7. Asset Improvement

9.7.1. Innovation and Improvement Proposals

- (a) The Asset Manager is expected to:
 - (i) propose asset enhancements to provide safety, road network, motorist, community and/or sustainability benefits; and
 - (ii) propose funding mechanisms for enhancements, which may include offsets, savings or business case-sourced funding
- (b) As a minimum innovation and improvement proposals must include the following information:
 - (i) technical details of the proposed asset enhancement;
 - (ii) benefits of the proposed asset enhancement;
 - (iii) financial cost of the proposed asset enhancement;

- (iv) proposed funding mechanism;
- (v) proposed program for the implementation of the asset enhancement; and
- (vi) key risks and opportunities.

10. Asset Information and Artefacts

10.1. Engineering and Asset Information Artefacts

10.1.1. WHT Engineering and Asset Information Artefacts

- (a) The Asset Manager must:
 - (i) manage and ensure the currency of WHT Digital Engineering and Asset Information Artefacts;
 - (ii) update the WHT Digital Engineering and Asset Information Artefacts no later than 1 month after a change to a WHT Motorway asset has been implemented; and
 - (iii) update WHT Digital Engineering and Asset Information Artefacts no later than 2 months after the discovery of an inaccuracy in the WHT Digital Engineering and Asset Information Artefacts.

10.1.2. SHT Engineering and Asset Information Artefacts

- (a) The Asset Manager must:
 - (i) manage and ensure the currency of SHT Digital Engineering and Asset Information Artefacts;
 - (ii) update the SHT Digital Engineering and Asset Information Artefacts no later than 1 month after a change to a SHT Motorway asset has been implemented; and
 - (iii) update SHT Digital Engineering and Asset Information Artefacts no later than 2 months after the discovery of an inaccuracy in the SHT Digital Engineering and Asset Information Artefacts.

10.1.3. System Faults and Equipment Alarms

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10.2. Asset Information System

10.2.1. AIS Requirements

- (a) The Asset Manager must procure, configure and commission an Asset Information System for the SHT Motorway and WHT Motorway.
- (b) The AIS must comply with the requirements detailed in Appendix F.

10.2.2. AIS Management

- (a) The Asset Manager must periodically upgrade the Asset Information System to ensure it remains:
 - (i) technically supportable;
 - (ii) consistent with good industry practice; and
 - (iii) compliant with the TfNSW asset classification standards and guidelines.

10.2.3. TfNSW Access to Asset Information System and Data During Term

- (a) The Asset Manager must provide TfNSW and the Principal with:
 - (i) full 'read' access to the Asset Information System;
 - (ii) remote access to the Asset Information System; and
 - (iii) free of charge licences for up to two concurrent users for use by TfNSW and the Principal for the Term.

- (b) The Asset Manager must annually provide TfNSW with the following information exported from the Asset Information System in a format acceptable to TfNSW:
 - (i) asset inventory for the SHT Motorway and WHT Motorway;
 - (ii) asset condition for each of the assets.

10.3. Periodic Asset Condition Assessment

- (a) The Asset Manager must:
 - (i) undertake periodic asset condition assessments of the SHT Motorway and WHT Motorway in accordance with the Technical Maintenance Plans and each Asset Management Plan; and
 - (ii) record the outcome of asset condition assessments in the Asset Information System;
- (b) The Asset Manager must undertake an Asset Condition Inspection to assess the condition of the assets, including Actual Residual Asset Life.
- (c) The Asset Condition Inspection must be conducted by an independent industry professional, approved by the Principal and engaged by the Asset Manager.
- (d) An Asset Condition Inspection report must be provided to the Principal no later than 2 months:
 - (i) [REDACTED]
 - A. [REDACTED]
 - B. [REDACTED]
- (e) The Asset Manager is not required to undertake the Asset Condition Inspection scheduled to occur [REDACTED] if it has not received a notice to extend the Expiry Date in accordance with clause 4.2 of the Deed.
- (f) The scope of the Asset Condition Inspection must include a representative sample of each of the asset types listed in the Technical Maintenance Plans and AIS to ensure a high degree of confidence that the assessed asset condition of the sample represents the asset condition of all Assets. The sample size for each asset type must be approved by the Principal prior to the commencement of the Asset Condition Inspection.
- (g) The Asset Condition Inspection report must:
 - (i) include an appraisal of the:
 - A. condition of assets determined by the Asset Condition Inspection, compared to the Minimum Asset Condition specified in the Technical Maintenance Plans;

- B. the Actual Residual Asset Life of assets determined by the Asset Condition Inspection, compared to the Forecast Residual Asset Life at the time of the Asset Condition Inspection;
 - (ii) use the asset condition values and asset condition considerations specified in T MU AM 01007 TI to categorise the condition of assets; and
 - (iii) use the Residual Life Assessment Criteria detailed in the Technical Maintenance Plans to determine the Actual Residual Asset Life.
- (h) The Asset Manager must undertake annual pavement condition monitoring and pavement condition indicators must be recorded in the time series of data in the AIS.
- (i) Pavement condition indicators must include:
- (i) for rigid pavements:
 - A. extent of cracking reflected in the surface of asphaltic concrete wearing surface; and
 - B. extent of cracking mapped after each surface milling and prior to resurfacing; and
 - (ii) generally, for all pavements:
 - A. frequency and extent of pot-holing repairs;
 - B. surface deformation and rutting;
 - C. surface curvature;
 - D. ride quality roughness counts; and
 - E. skid resistance.

11. Handover

11.1. Summary of Handover Services

- (a) The Asset Manager must:
- (i) Prepare, update and comply with the SHT Asset Handover and Transition Plan and the WHT Asset Handover and Transition Plan;
 - (ii) undertake an asset condition assessment of the SHT Motorway and WHT Motorway at the end of the Asset Management Phase.
 - (iii) handover accurate and up to date Digital Engineering and Asset Information Artefacts;

OFFICIAL

- (iv) handover all records identified in the Records Management Plan;
- (v) meet end of the Term asset condition requirements as contained in the AM Services Specification and AM Deed;
- (vi) handover the Asset Information System at the end of the Term; and

11.2. Handover Asset Condition Inspection and Report

- (a) The scope of the Handover Asset Condition Inspection must include a representative sample of each of the asset types listed in the Technical Maintenance Plans and AIS to ensure a high degree of confidence that the assessed asset condition of the sample represents the asset condition of all Assets. The sample size for each asset type must be approved by the Principal prior to the commencement of the Handover Asset Condition Inspection.
- (b) The Handover Asset Condition Inspection report must:
 - (i) include an appraisal of the:
 - A. condition of assets determined by the Handover Asset Condition Inspection, compared to the Minimum Asset Condition specified in the Technical Maintenance Plans;
 - B. Actual Residual Asset Life of assets determined by the Handover Asset Condition Inspection, compared to the Forecast Residual Asset Life at the time of the Handover Asset Condition Inspection;
 - C. Supportability Risk for the 5 years following Handover.
 - (ii) use the asset condition values and asset condition considerations specified in T MU AM 01007 TI to categorise the condition of assets; and
 - (iii) use the Residual Life Assessment Criteria detailed in the Technical Maintenance Plans to determine the Actual Residual Asset Life.

11.3. Handover Condition

- (a) The Asset Manager must operate, maintain, refurbish, rehabilitate, replace or repair the assets of the SHT Motorway and WHT Motorway as required such that the condition of the SHT Motorway and WHT Motorway assets at the end of the Asset Management Phase meet or exceed the Handover Condition.
- (b) Handover Condition is defined as:
 - (i) no asset exceeds intervention levels for Corrective Maintenance, as defined in the Technical Maintenance Plans, without approval from the Principal;

OFFICIAL

- (ii) all assets meet the Minimum Asset Condition defined in the Technical Maintenance Plan;
- (iii) Residual Life Assessed Assets have a Supportable Residual Asset Life of at least two years from the end of the Asset Management Phase or;
 - A. for Contract Period 1 a Supportable Residual Asset Life at least equal to the Forecast Residual Asset Life at the end of Contract Period 1; and
 - B. for Contract Period 2, a Supportable Residual Asset Life at least equal to the Forecast Residual Asset Life at the end of Contract Period 2.
- (iv) Other Assets have a Supportable Residual Asset Life of at least four years from the end of the Asset Management Phase or;
 - A. for Contract Period 1 and Contract Period 2 a Supportable Residual Asset Life at least equal to the 'Contract Period 1 Supportable Residual Asset Life' specified in the Asset Management Plans; or
 - B. for Contract Period 2 a Supportable Residual Asset Life at least equal to the 'Contract Period 2 Supportable Residual Asset Life' specified in the Asset Management Plans.
- (v) The Actual Residual Asset Life of Other Assets is consistent with the Forecast Residual Asset Life at the time of the Handover Asset Condition Inspection.

11.4. Engineering and Asset Information

- (a) The Asset Manager must handover the Digital Engineering and Asset Information Artefacts including any tools, software, devices required to view and maintain the Digital Engineering and Asset Information Artefacts.
- (b) The Digital Engineering and Asset Information Artefacts must be complete and accurate at Handover.

11.5. Asset Information System

- (a) The Asset Manager must handover the complete AIS including:
 - (i) hardware;
 - (ii) software and novatable / transferable licences for the software;
 - (iii) all data maintained in the AIS; and
 - (iv) operations and maintenance manuals for the AIS;

- (b) The Asset Manager must provide AIS training.
- (c) The Asset Manager must demonstrate the data contained in the AIS can be exported in a format acceptable to the Principal.
- (d) The Asset Manager must comply with the Handover and Transition Plans.

12. Sydney Harbour Tunnel Motorway and Domain Tunnel Refurbishment

12.1. SHT Tunnel Administration and Control Centre

12.1.1. General

[REDACTED]

12.1.2. Exterior

- (a) TfNSW will refurbish the exterior of the SHT TACF including the car parks.
- (b) The Asset Manager must support and contribute to the development of SHT TACF exterior refurbishment requirements.

12.1.3. Control Room & Computer Rooms

[REDACTED]

12.1.4. Emergency Management Room

[REDACTED]

12.1.5. Office Facilities

- (a) TfNSW will refurbish the SHT TACF office facilities.
- (b) The Asset Manager must support and contribute to the development of SHT TACF office facilities refurbishment requirements.

12.2. Domain Tunnel

- (a) TfNSW will progressively renew the Domain Tunnel. The Principal may choose to offer some or all renewal activities to the Asset Manager as Additional Services. Some renewal work will, by necessity, commence after the start of the Initial Asset Management Phase.

12.3. Other Facilities

- (a) Not used.

13. Motorway Control Centre Transition

13.1. General

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) The Asset Manager must develop and implement a Motorway Control Centre Transition Plan that complies with the requirements of Appendix A.
- (e) The Asset Manager must support activities to validate the capability to operate the Motorways from the MCC.
- (f) [REDACTED]

13.2. MCC and DRS Fit Out

- (a) The Asset Manager must fit out the [REDACTED], the MCC and DRS with all equipment necessary to support operation of the Motorways except for the works undertaken by the Main Works Contractor as specified in the WHT SWTC, Appendix B.32.
- (b) [REDACTED]
[REDACTED]
[REDACTED]

13.3. SHT OMCS

- (a) The Asset Manager must plan and undertake all works necessary to implement the migration of required SHT OMCS systems to the MCC except for:
 - (i) the works undertaken by the Main Works Contractor as specified in the WHT SWTC, Appendix G.2; and
 - (ii) [REDACTED]

14.

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]



15. AM Services Plans

- (a) The intended purposes of the AM Services Plans include:
- (i) to demonstrate to the Principal that the Asset Manager has the understanding, capacity and capability at all times to perform AM Services safely and in accordance with the requirements of this Deed;
 - (ii) to define responsibilities, resources and processes for planning, performing and verifying that AM Services satisfy the requirements of this Deed; and
 - (iii) to allow the Principal to understand how the Asset Manager will achieve the performance outcomes specified in this AM Deed, the key outcomes described in section 2(a) of this AM Services Specification, and otherwise fulfil its obligations under this AM Deed.
- (b) The AM Services Plans must comply with the minimum requirements detailed in Appendix A.
- (c) The Asset Manager must provide the Principal with convenient access to the latest approved AM Services Plans at all times.

16. Key Contracts

16.1. General

16.2. Incident Response Services

- (a) The Principal will enter into an agreement with the Incident Response Services Entity for roadside assistance and roadside Motorway Incident response for the Motorways.
- (b) The Asset Manager must collaborate with the Incident Response Services Entity on the development of the Incident Response Plan and Traffic Control Plan and work with the Incident Response Services Entity to ensure the safe and effective response to Motorway Incidents.

16.3. Electricity Procurement

- (a) The Principal will procure all electricity supply and connection contracts for the Motorways.

16.4. Utilities

- (a) The Asset Manager must enter into agreements with utility providers as necessary to support the operation and maintenance of the WHT Motorway and SHT Motorway.

16.5. Sydney Harbour Tunnel CCCS Technical Services

- █ [Redacted]

17. Level of Performance

17.1. Motorway Incident Detection, Response and Clearance

[Redacted]

- █ [Redacted]

[Redacted]

[Redacted]

- █ [Redacted]

[Redacted]

[Redacted]

[Redacted]

- █ [Redacted]

[Redacted]

[Redacted]

OFFICIAL

17.2. Motorway Availability

17.2.1. Not Used

17.2.2. Not Used

17.2.3. Unplanned Maintenance Closures

- (a) The Asset Manager must manage and maintain the SHT Motorway and WHT Motorway to avoid Lane and Carriageway closures for Unplanned Maintenance.
- (b) The Asset Manager must minimise the duration Lanes and Carriageways are closed for Unplanned Maintenance.

17.3. Asset Integrity & Asset Management

- (a) The Asset Manager must ensure SHT Motorway assets and WHT Motorway assets meet or exceed the Minimum Asset Condition specified in the Technical Maintenance Plans throughout the Initial Asset Management Plans and Asset Management Phase.
- (b) 100% of Preventive Maintenance must be completed in accordance with the Technical Maintenance Plans and Annual Maintenance Plan.
- (c) 100% of Corrective Maintenance and predictive maintenance must be completed in accordance with the intervention levels, repair standards and response times detailed in the Technical Maintenance Plans.
- (d) Major Repair and Replacement Works must be completed by the dates specified in Forecast Major Repair and Replacement Plan.

17.4. Environment & Sustainability

- (a) There must be no violations or non-compliances with respect to the Environmental Documents and Environment Protection Licence conditions and regulations.
- (b) All objectives and initiatives identified in the Sustainability Management Plan must be met and achieved by the dates specified in the Sustainability Management Plan.

17.5. Toll Collection Enabling Infrastructure

- (a) Tolling Enabling Infrastructure must support all toll collection functions and be 100% available, without performance degradation, when tolled Lanes are open to traffic and toll collection systems are operating.

17.6. Other

- (a) Reports and notifications must be provided within the timeframes specified in Appendix B.
- (b) An acknowledgment must be provided to all community and customer complaints within 2 Business Days.

Appendix A Plans and Procedure Requirements

A.1 General

- (a) The AM Services Plans must provide all information necessary for the coordinated and integrated operations and maintenance of the Motorways.
- (b) The AM Services Plans include the Operations and Maintenance Manuals as well as all other documentation that the Asset Manager must develop, update and retain as defined in this Appendix.
- (c) The Asset Manager must develop, implement and update the AM Services Plans in accordance with the minimum requirements specified in this Appendix, this AM Deed and Asset Management Best Practice.
- (d) The Asset Manager must develop, or participate in the development of, each of the AM Services Plans in accordance with this AM Deed, and in full collaboration and coordination with the Principal, Main Works Contractor, TMC, Authorities and others nominated by the Principal where required.
- (e) AM Services Plans must be a quality assured document prepared in accordance with AS/NZS ISO 9001 (Quality Management Systems – Requirements).
- (f) The Asset Manager may combine and integrate the requirements of the various AM Services Plans detailed in this Appendix, only where it has obtained prior approval in writing by the Principal except for the following plans which must be separate documents:
 - (i) the Environmental Management Plan,
 - (ii) the Work Health Safety (WHS) Management Plan; and
 - (iii) Traffic Management and Safety Plan.
- (g) If plans are combined, all the requirements pertaining to individual plans detailed in this Appendix must be addressed in the combined plan.
- (h) The Asset Manager may propose maintaining the required content of the AM Services Plans in an electronic format accessible through an information system. The Principal must approve such proposals prior to their implementation.
- (i) The AM Services Plans must be regularly reviewed and updated:
 - (i) to implement Asset Management Best Practice and developing standards;
 - (ii) to address changes in other AM Services Plans;

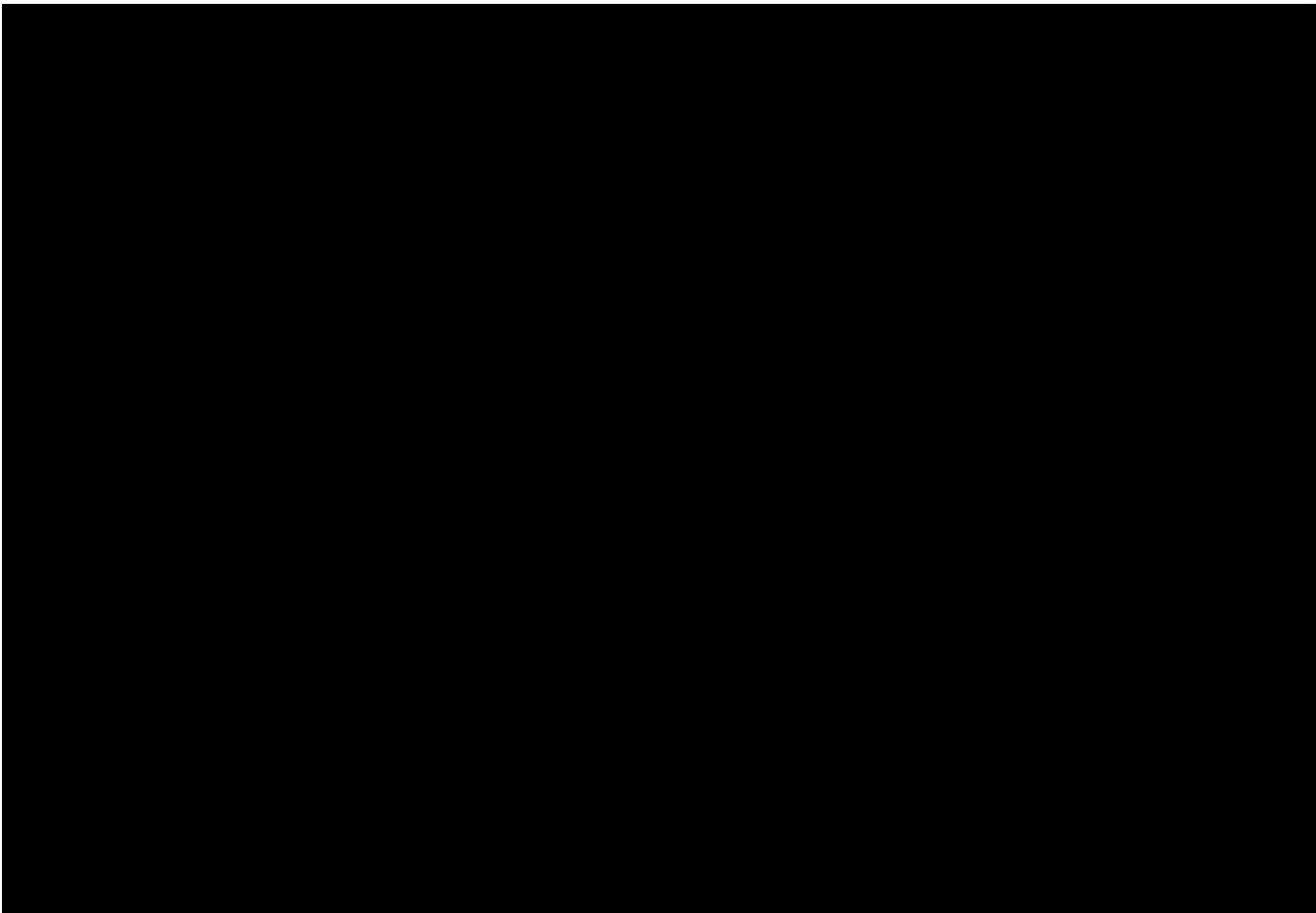
OFFICIAL

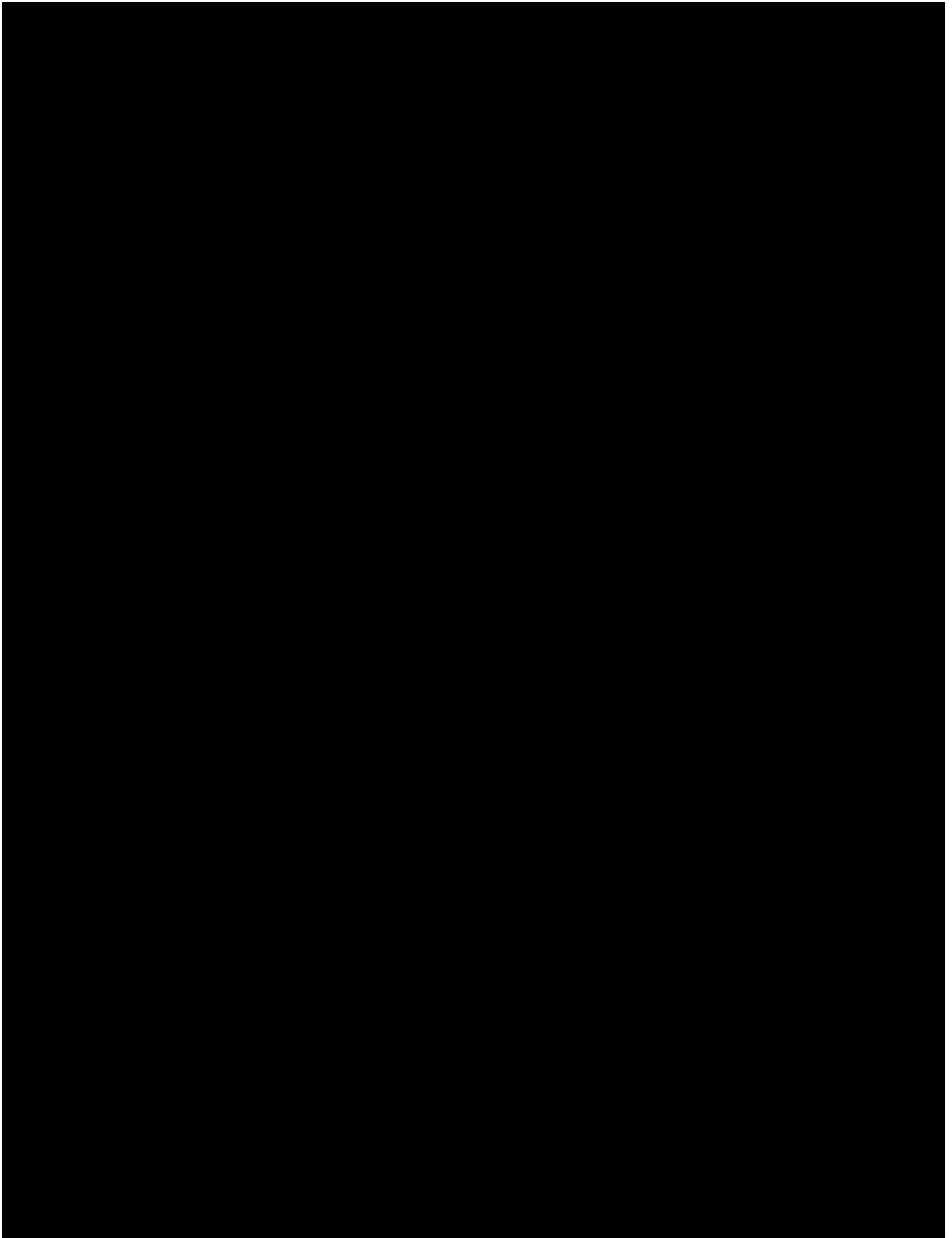
- (iii) changes in relevant TfNSW standards and guidelines;
 - (iv) to promptly address issues and lessons learned in exercises and major incidents; and
 - (v) changes in Law and the requirements of Authorities.
- (j) The AM Services Plans must meet the requirements of the Environmental Documents and where a management plan is required by the Environmental Documents that is similar to any AM Services Plans in this Appendix, the relevant AM Service Plan must include the requirements of the similar management plan.
- (k) The AM Services Plans must include a compliance matrix to demonstrate where the requirements of this AM Deed and AM Services Specification are addressed within the AM Services Plans, including but not limited to, accurate traceability of each item of the AM Services Plans.

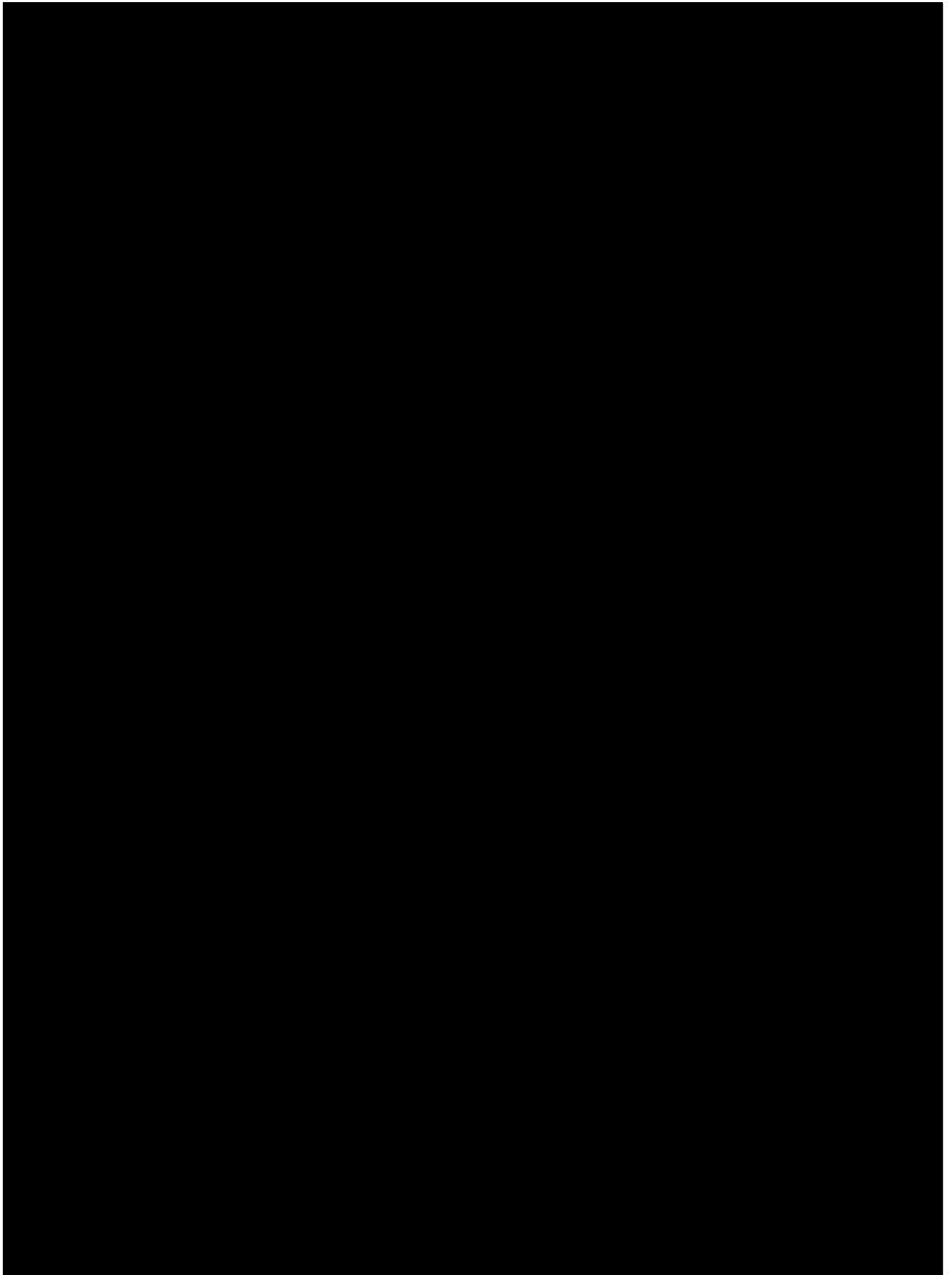
A.2 Submission and Update Requirements

A.2.1 Submission Timeframe

- (a) The AM Services Plans must be developed and submitted to the Principal in accordance with the following schedule.







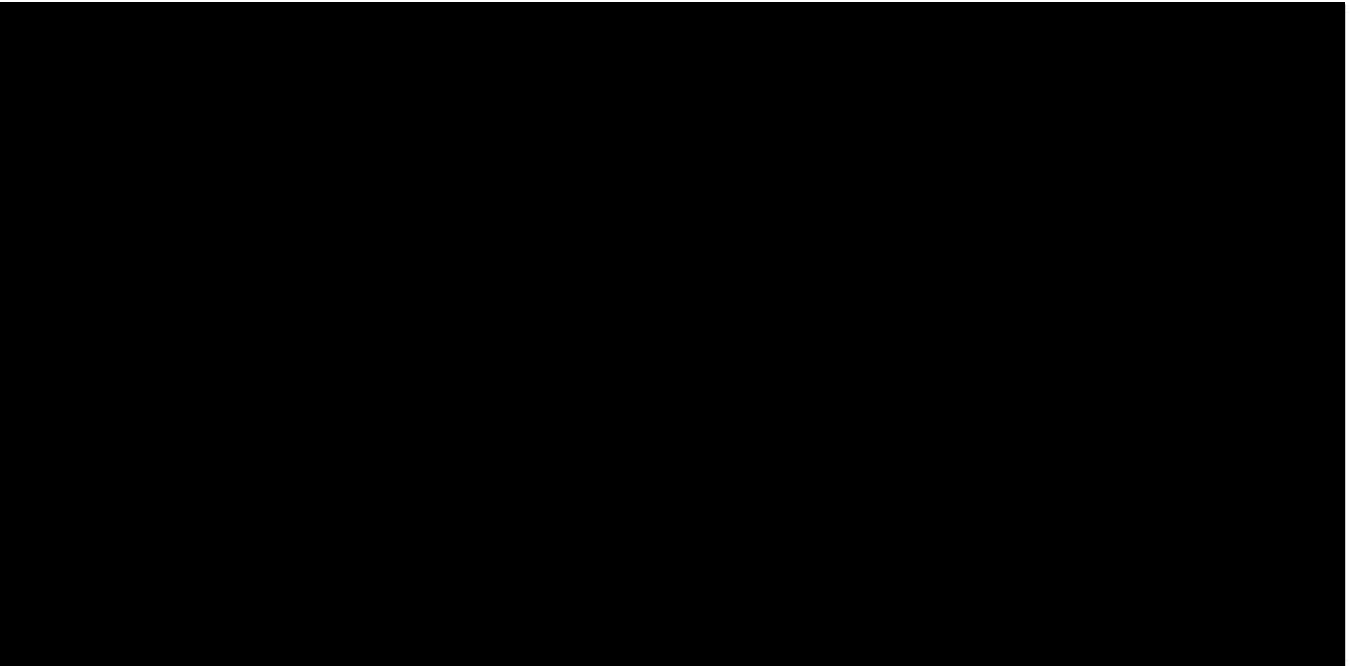
OFFICIAL

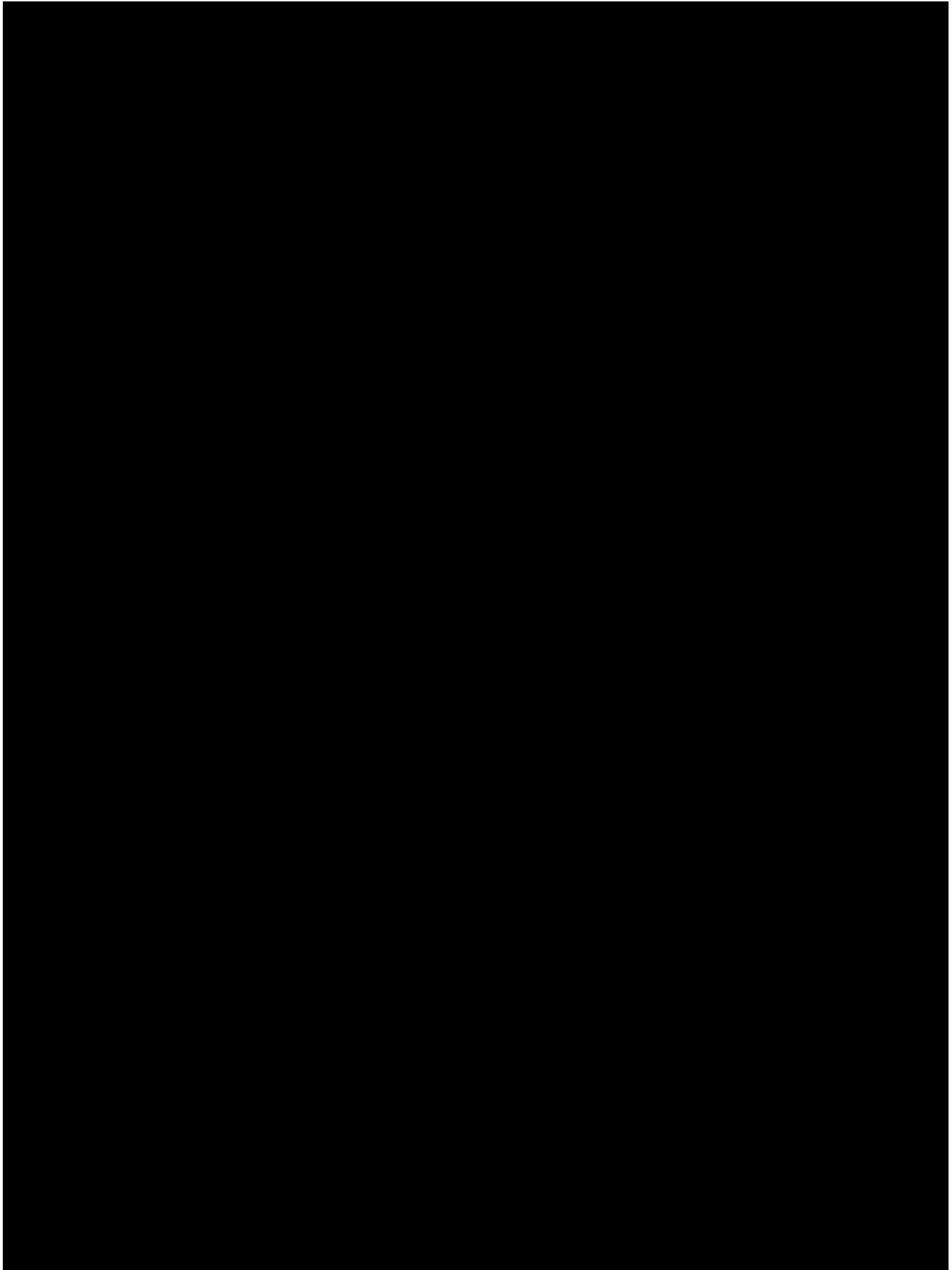


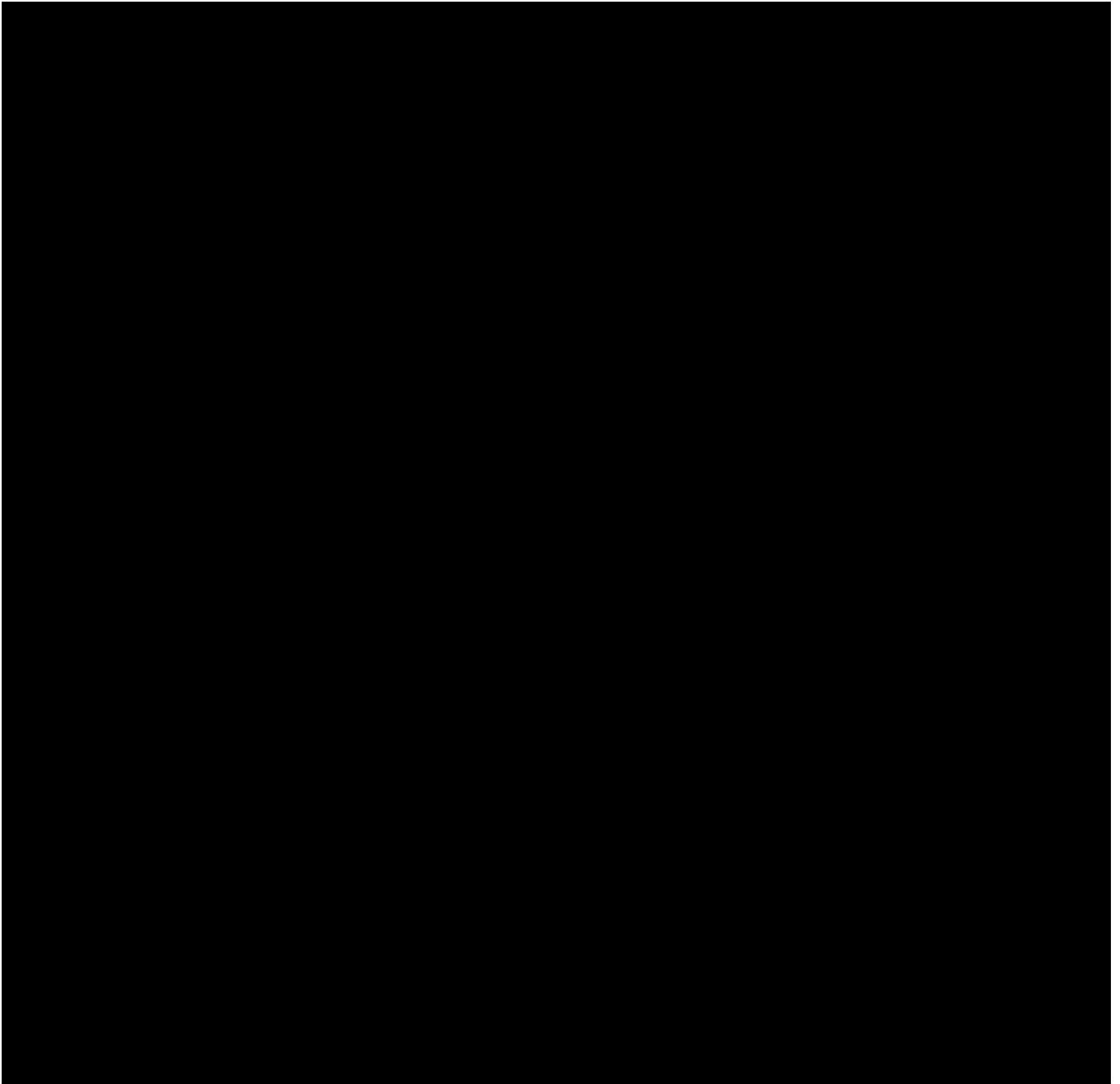
A.2.1.2 Not Used

A.2.1.3 [Redacted]

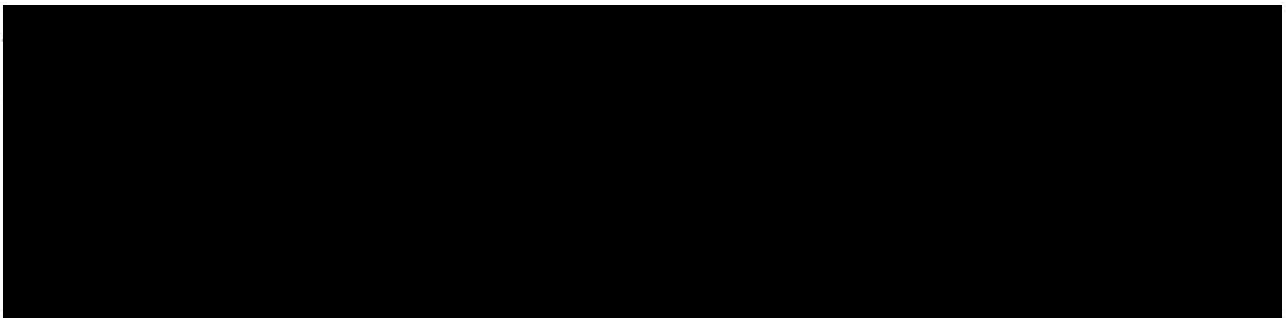
- [Redacted]



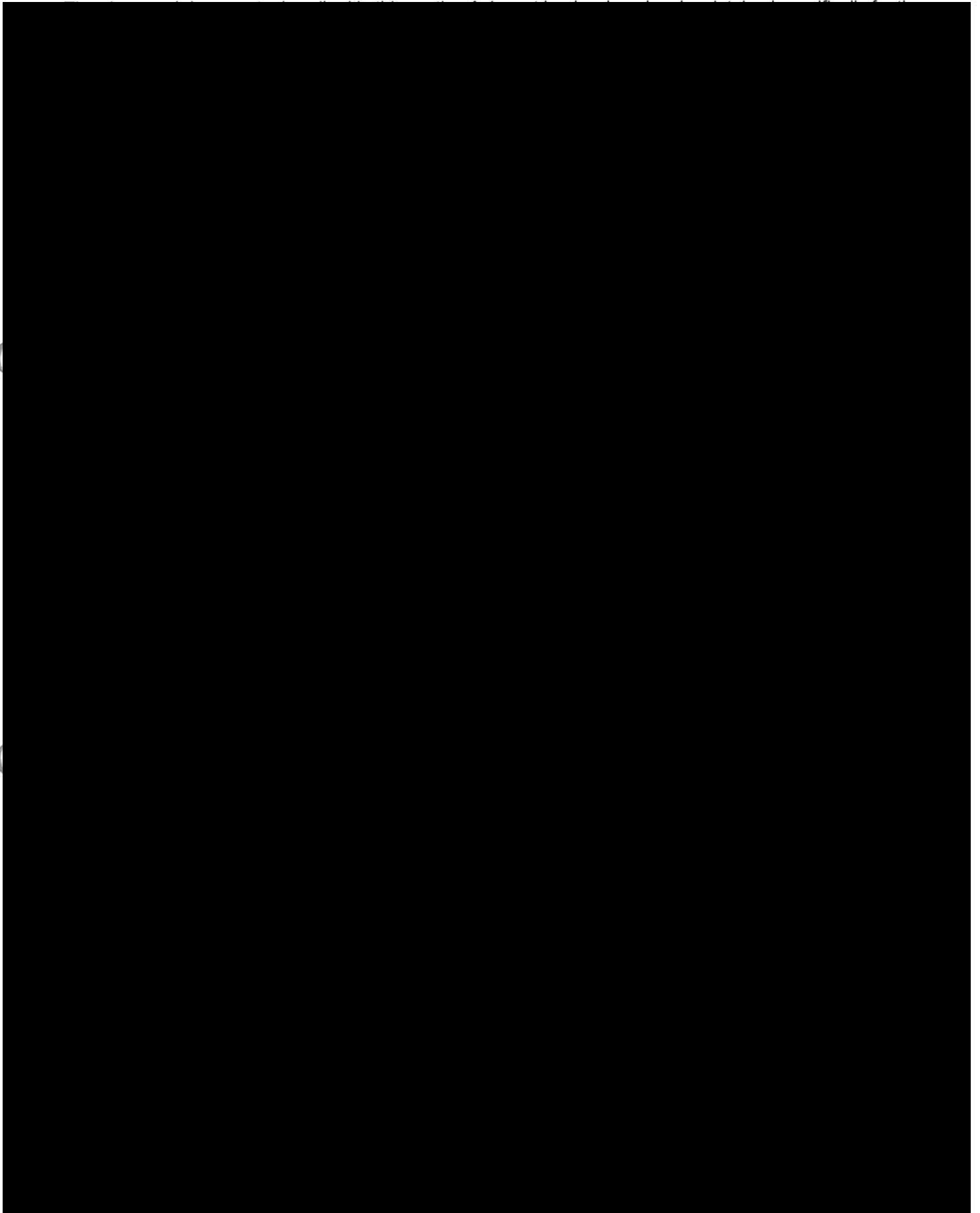




A.3 Common Plans



A.4 SHT Motorway & Domain Tunnel Plans

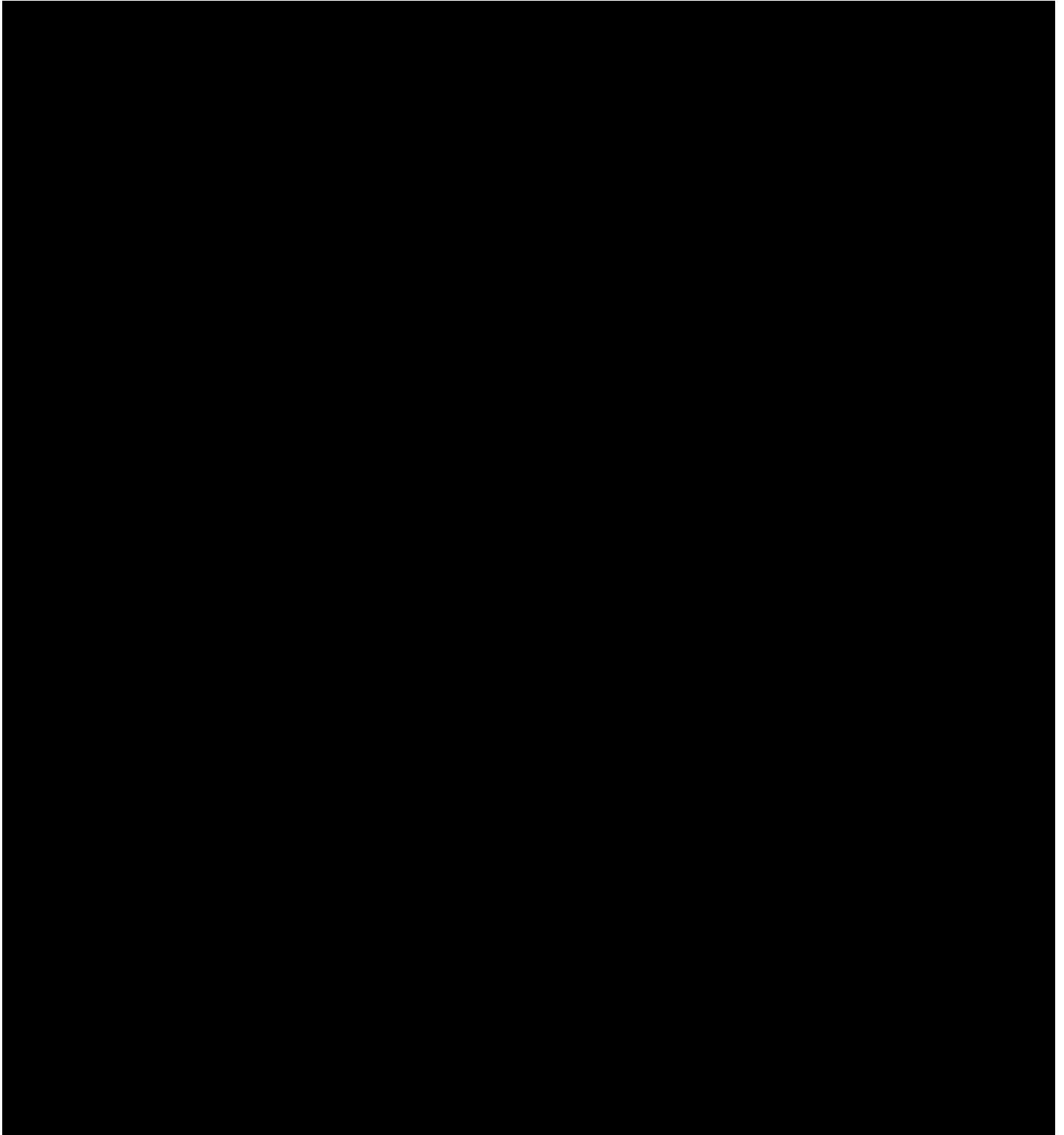


[Redacted]

[Redacted]

[Redacted]

A.5 WHT Motorway Plans and Documents



OFFICIAL

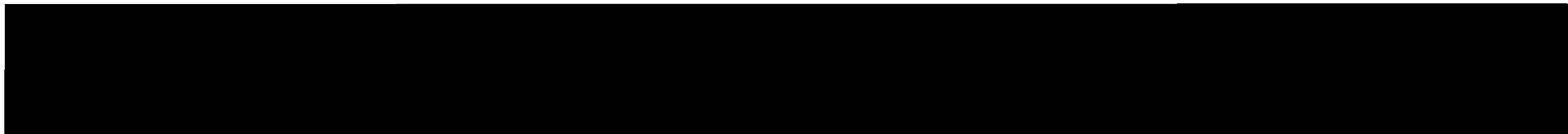
Appendix B Reporting and Notification Requirements

B.1 Reports

■ [REDACTED]

[REDACTED]

OFFICIAL



B.2 Notifications

(a) The Asset Manager must notify the Principal of events in accordance with the table below.

Notification	Trigger	Timing	Format	Details
Motorway Incident	Unplanned Carriageway closure	within 15 minutes	SMS, email	Initial details of the cause of the unplanned Carriageway closure, mitigations in effect and planned and expected reopening time.
WHS Incident	Notifiable WHS Incident	within 24 hours	email	Detail of any notifiable WHS Incident
Environmental Incident	Notifiable Environmental Incident	within 24 hours	email	Details of any notifiable Environmental Incident
Defects	Defect identified	██████ ██████	email	as specified in 8.6.5.

OFFICIAL

Appendix C Traffic and Transport Management

C.1 Introduction

C.1.1 TfNSW's Management and Control Responsibilities

- (a) TfNSW has overall responsibility for the management and control of the operation of the Sydney road network and traffic systems, including the Motorways.
- (b) The Asset Manager is responsible for the control and management of responses, including Lane closures, for all Motorway Incidents on the Motorways.
- (c) The Asset Manager must operate the road network and traffic systems of the Motorways:
 - (i) as part of the Sydney road network and traffic systems;
 - (ii) in accordance with and in support of the overall constraints, control, requirements and responsibilities that TfNSW has for the operational management of the Sydney road network and traffic systems; and
 - (iii) in accordance with TfNSW's protocols and procedures for the management of the Sydney road network and traffic systems.

C.1.2 The Asset Manager's Responsibilities

- (a) For the duration of the AM Services, the Asset Manager must manage the Motorways and traffic systems affected by the AM Services, within the overall constraints, control and responsibilities that TfNSW has for the operational management of the Sydney road network and traffic systems.
- (b) The Asset Manager must develop documents including plans and procedures and implement traffic management strategies to minimise and mitigate traffic impacts, including those caused by the AM Services, to optimise road safety.

C.2 Management of the Road Network and Traffic Systems by the Asset Manager

- (a) The Asset Manager must plan, manage, operate and maintain all the infrastructure, systems, facilities, services and resources that are required to manage the Motorways and traffic systems, and in accordance with the Traffic Management and Safety Plan.
- (b) The Asset Manager's obligations in regards management of the AM Services for the Motorways and associated traffic systems must include the operation, maintenance and monitoring of all infrastructure, systems, facilities, services and resources to manage the Motorways and traffic

systems. Infrastructure and systems include, but are not limited to, regulatory traffic signs, static direction signposting, longitudinal and transverse line marking, pavement markings, closed circuit television cameras, variable speed limit signs, traffic monitoring detector loops, variable message signs and tunnel closure devices.

- (c) In addition, on the Motorways, the Asset Manager must manage and control traffic and traffic movements. The management and control operations and functions must include traffic monitoring, incident detection and management, the use of driver advisory systems, reporting and logging of events and an interface and communications link with the TMC.
- (d) The Asset Manager must investigate, develop, formalise with TfNSW and the Principal and TMC and implement traffic management operational protocols, incident responses, processes and agreements for the safe and efficient management and operation of the Motorways.
- (e) The management responsibilities of the Asset Manager do not override any existing legislation, regulation, delegations or existing agreements between TfNSW and other agencies concerning the ownership, management and operation of the Motorways.
- (f) The Asset Manager must continuously monitor, update and report to TfNSW and the Principal and the TMC on the impact of the AM Services on the capacity and performance of the Motorways.
- (g) As a minimum, the Asset Manager must provide the following infrastructure, systems, facilities, services and resources to manage the Motorways and traffic systems:
 - (i) a Traffic Management and Safety Plan for the AM Services;
 - (ii) traffic and transport communications;
 - (iii) traffic operations and incident management;
 - (iv) driver information, temporary works and traffic infrastructure;
 - (v) traffic and transport monitoring and reporting;
 - (vi) Road Occupancy Licence requirements;
 - (vii) facilities for road based public transport;
 - (viii) facilities for pedestrians and cyclists;
 - (ix) traffic and transport management personnel and infrastructure; and
 - (x) validation of post opening traffic conditions.

C.3 Traffic and Transport Communications

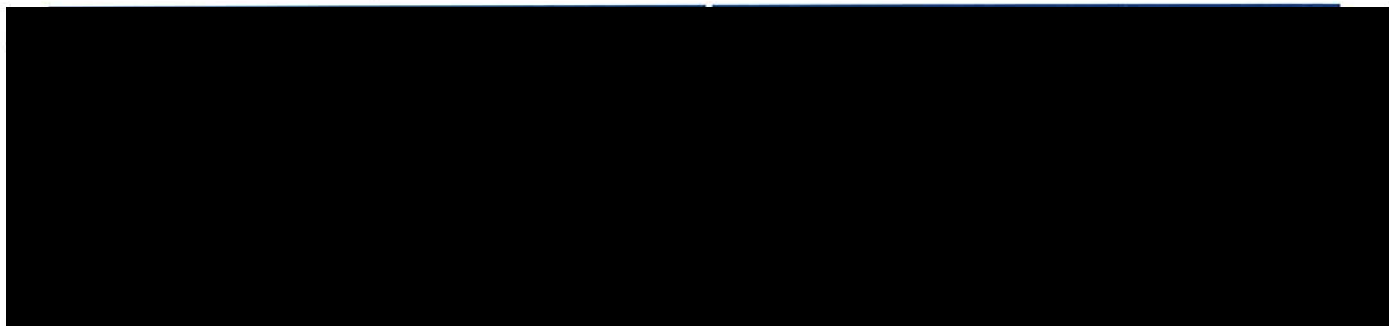
C.3.1 Overall Requirements

- (a) The Asset Manager must liaise, consult and communicate with the community, TfNSW and the Principal, TMC, Authorities, agencies and all other Stakeholders during the AM Services, in relation to its obligations and responsibilities for the management of the Motorways.
- (b) The liaison, consultation and communication process must:
 - (i) ensure that timely, accurate and comprehensive traffic and transport information is provided to all potential and existing road users to optimise their travel options and to reduce the traffic and transport impacts due to the AM Services, incidents and other hazards arising; and
 - (ii) allow and accommodate community feedback to the Asset Manager in relation to traffic and transport management issues.
- (c) Traffic and transport communications must be addressed specifically in the Community and Stakeholder Plan.
- (d) As a minimum, as part of the overall traffic and transport communications strategy included in the Community and Stakeholder Plan, the Asset Manager must implement:
 - (i) the dissemination of information to the community; and
 - (ii) protocols and methods of communication.

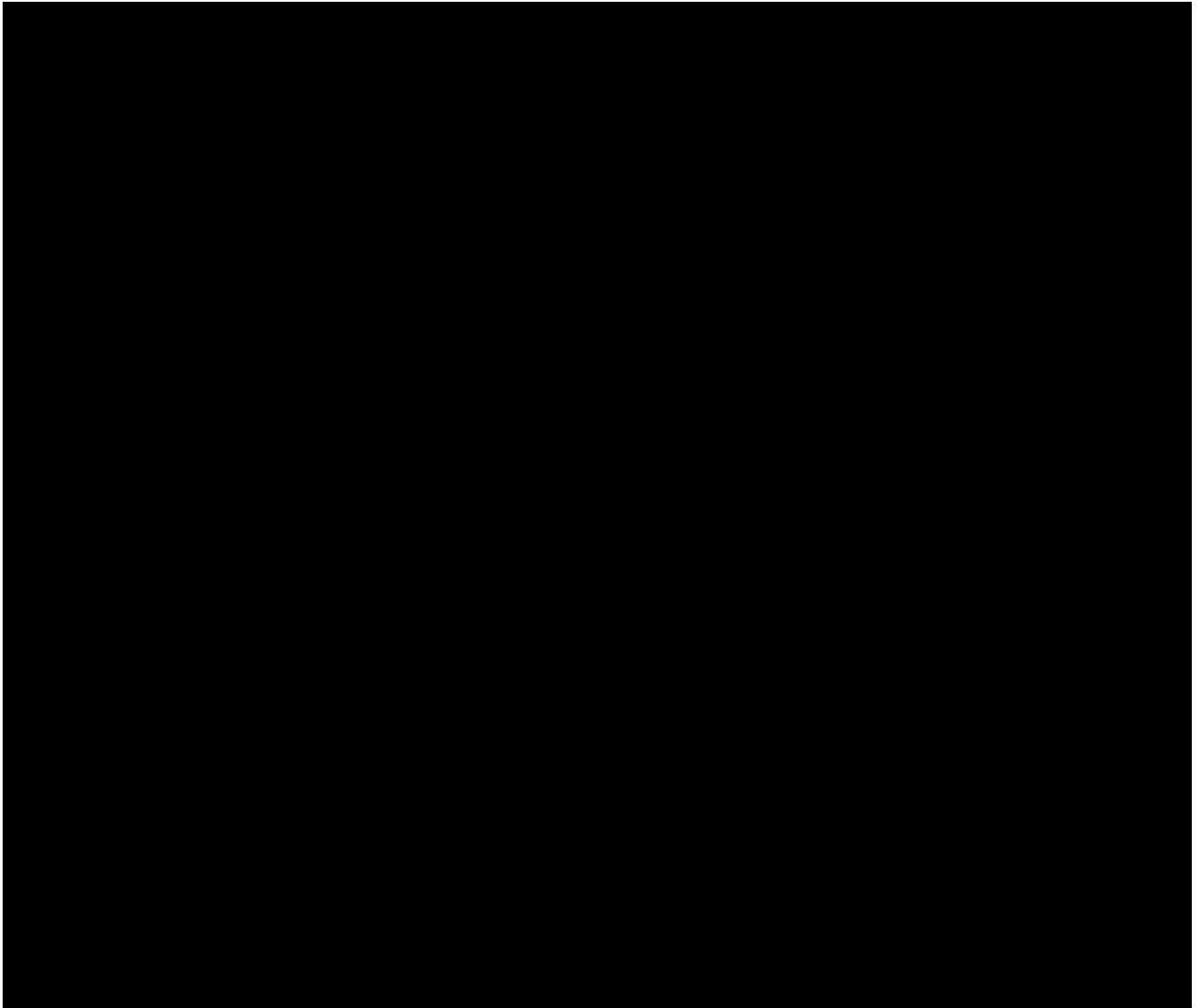
C.3.2 Dissemination of Information to the Community

- (a) All information to be released to the community in relation to the Asset Manager's management of the Motorways must be submitted to the Principal and TMC and the Asset Manager must obtain the Principal's approval prior to its distribution.
- (b) The minimum requirements for dissemination of information to the community in relation to the management of the Motorways are detailed in Table G.2-4-1 below.

Table C.3.2 -1 - Minimum Requirements for the Dissemination of Information to the Community



OFFICIAL



C.3.3 Protocols and Methods of Communication

- (a) In consultation with TMC, the Asset Manager must develop, formalise and implement, traffic management, control and operational protocols, procedures, processes, systems and communications between the Asset Manager, TMC, the Principal and TfNSW for all traffic and transport management and control matters affecting the Motorways and traffic systems during the AM Services, including road network monitoring, day-to-day traffic management and administration, incident management, information distribution and operation and control of CCTV systems and variable message signs.
- (b) The Asset Manager must obtain TMC's agreement to all proposals for traffic management, control and operational protocols, procedures, processes, systems and communications between the Asset Manager, the Principal and TMC prior to the commencement of any of the AM Services that affects the operation of the Motorways and traffic systems.

- (c) All relevant Authorities, TfNSW and the Principal must be integrated into the traffic management and operational protocols, procedures, processes and methods of communication. Relevant Authorities include local councils and the owners and operators of the Utility Service affected by the AM Services.

C.4 Traffic Operations and Incident Management

C.4.1 Overall Requirements

- (a) The Asset Manager must manage and control traffic and traffic movements on Motorways, including the management of responses to incidents, in accordance with the traffic management, control and operational protocols, procedures, processes, systems and communications between the Asset Manager and the TMC.
- (b) The management and control of traffic and traffic movements must be achieved by the management and operation of the following infrastructure, services, systems and resources:
 - (i) traffic control room; and
 - (ii) traffic monitoring and incident management, including an incident detection and management system and incident response plans and procedures.

C.4.2 Traffic Monitoring and Incident Management

- (a) The Asset Manager must:
 - (i) develop, implement and have operational all systems, plans and other resources for traffic monitoring and incident management prior to the commencement of the AM Services;
 - (ii) monitor traffic on the Motorways, including traffic entering and departing, using the CCTV system;
 - (iii) detect and log Motorway Incidents;
 - (iv) implement traffic incident responses when incidents occur, including the provision of assistance to motorists;
 - (v) respond to emergency situations on the Motorways;
 - (vi) provide informative and timely driver information about traffic conditions and incident situations on Motorways, including the use of fixed and movable variable message signs;
 - (vii) advise TMC immediately of the nature of any matter within its knowledge which is likely to affect, or is affecting, the free flow of traffic, including:

- A. unusual traffic congestion;
- B. any action the Asset Manager proposes to take in relation to the AM Services;
- C. any action by any third party;
- D. any unplanned Lane, road, footpath or cycleway closure; or
- E. any incident on the Motorways; and

(viii) advise and keep the TMC informed on the schedule and progress in rectifying the matter.

C.4.3 Incident Detection and Management System

- (a) The Asset Manager must implement, operate and maintain an incident detection and management system that provides a high level response to any planned or unplanned incident occurring on the Motorways which affects the normal flow of traffic.
- (b) The Asset Manager must detect incidents from the CCTV system, AVIDS (where available), commuter reports, the NSW Police Force, the TMC and the Asset Manager's own personnel. The Asset Manager must manage and operate the incident detection and management system including the manual entry of incident information when required, uniquely define and identify each incident, and maintain a history of all incidents.
- (c) All actions undertaken by the Asset Manager must be logged in an event log file. The Asset Manager must transmit all the incident data to the TfNSW and the Principal and TMC, in a format acceptable to the TMC [REDACTED]

C.4.4 Incident Response Procedures

- (a) Incidents that are detected and declared in the incident detection and management system must produce a response that is managed through an Incident Response Procedure to:
 - (i) mitigate the effect of the incident;
 - (ii) clear the incident;
 - (iii) return the Motorways and traffic systems to normal conditions as soon as possible; and
 - (iv) review the effectiveness of responses and recommend improvements to the procedure.
- (e) The Asset Manager must investigate, develop and formalise and maintain a comprehensive suite of Incident Response Procedures for the Motorways.
- (f) Incident Response Procedures must cover all the anticipated planned and unplanned incidents that could occur, with due recognition given to the type and nature of the incident, the time of day

OFFICIAL

and the location on the Motorways. The Incident Response Procedures must address the immediate safety issues on Carriageways in the area surrounding the incident.

- (g) Incident Response Procedures must incorporate the use of variable message signs, Lane use controls, driver advisory signs and any other devices to advise motorists of actions to be taken in response to incidents. Actions in the Incident Response Procedures must be linked to the TMC to further mitigate the impacts of incidents over the Sydney road network controlled by the TMC

C.5 Driver Information, Temporary Works and Traffic Infrastructure

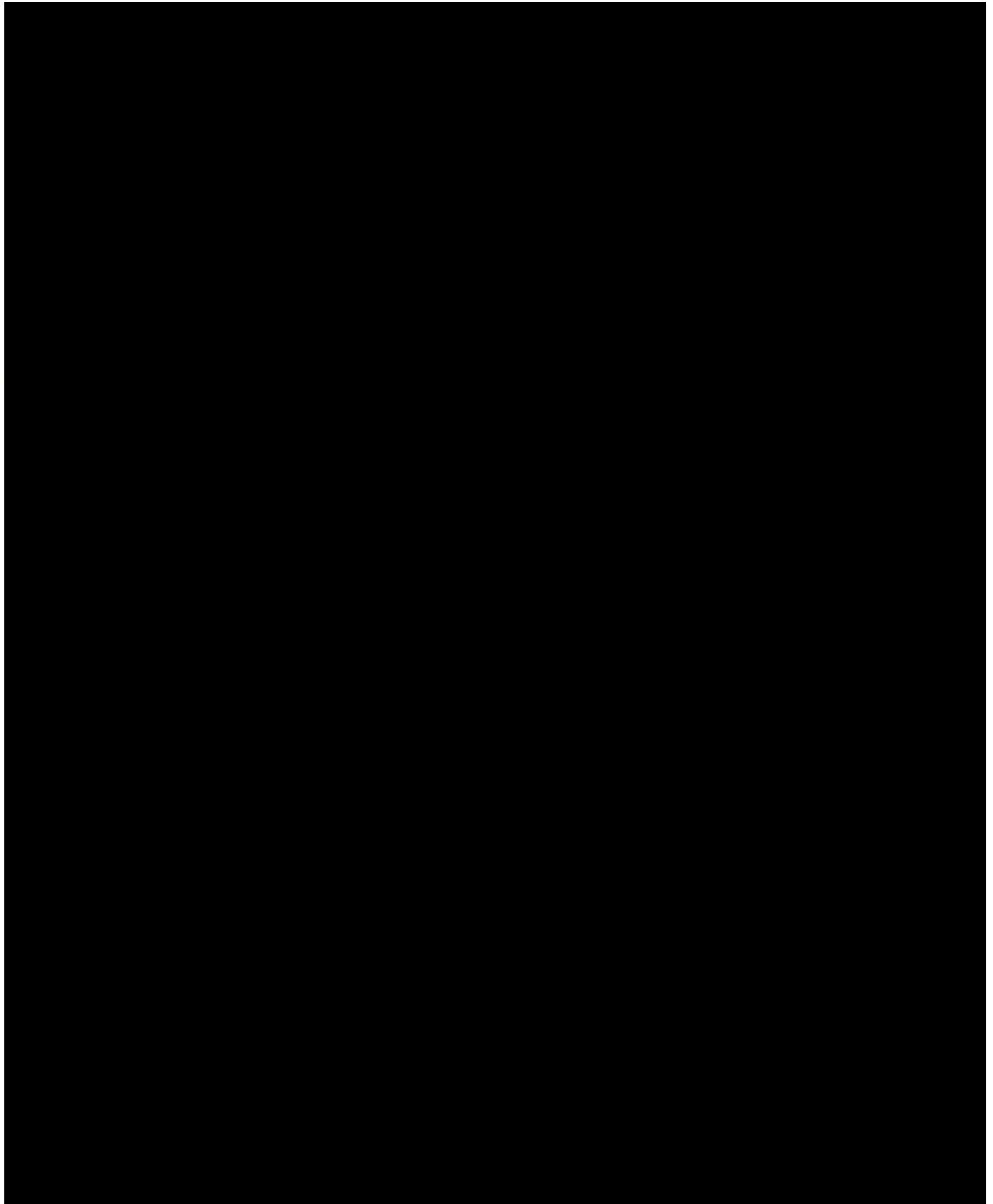
C.5.1 General Requirements

- (a) The Asset Manager must provide driver information and temporary traffic infrastructure (where appropriate and as required) to ensure the safe and efficient movement of traffic and transport on the Motorways.

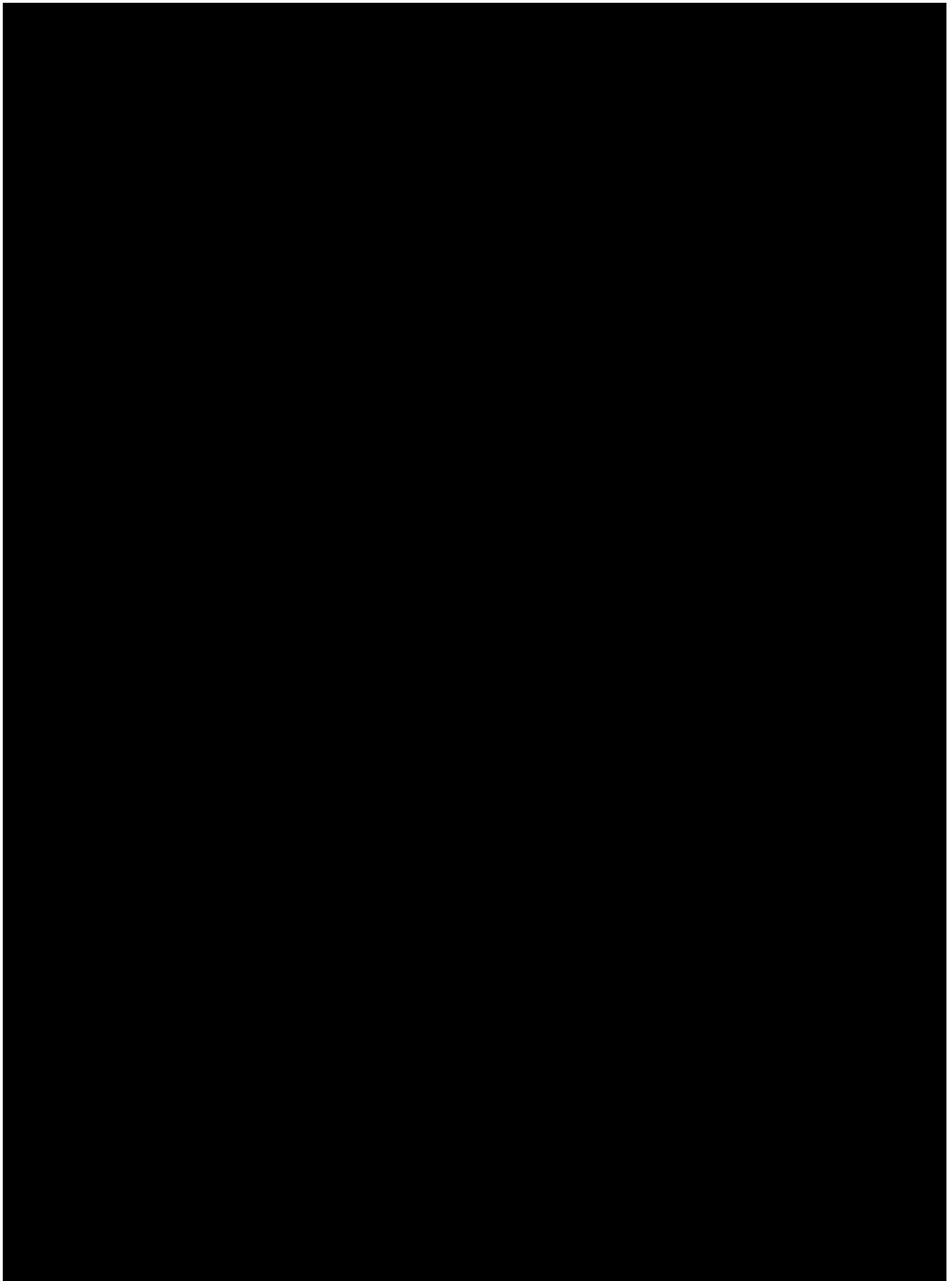
C.5.2 Variable Message Signs (VMS)

- (a) The Asset Manager must operate and maintain the Motorways VMS to ensure that they remain operational and integrated with the traffic monitoring and incident management system during the AM Services.
- (b) Additional temporary VMS must be used, when necessary, to supplement the installed Motorways signs and systems, to manage and control traffic and traffic movements on the Motorways.
- (c) The additional temporary VMS must be mounted on trailers or vehicles with the capability of displaying up to four screens of three lines and eight characters per line. Messages must be capable of being pre-programmed, modified or altered remotely by lap top computer with a mobile phone.
- (d) The additional temporary VMS must be:
 - (i) installed, relocated or removed within one hour of being required or notified to do so by the Asset Manager, TfNSW or TMC; and
 - (ii) corrected or replaced within four hours of being required or notified to do so in the case of failure or breakdown.
 - (iii) The temporary VMS must be connected to, managed and operated from the MCC. The Asset Manager must monitor the operations of the temporary VMS to ensure that they are operational at all the required times.

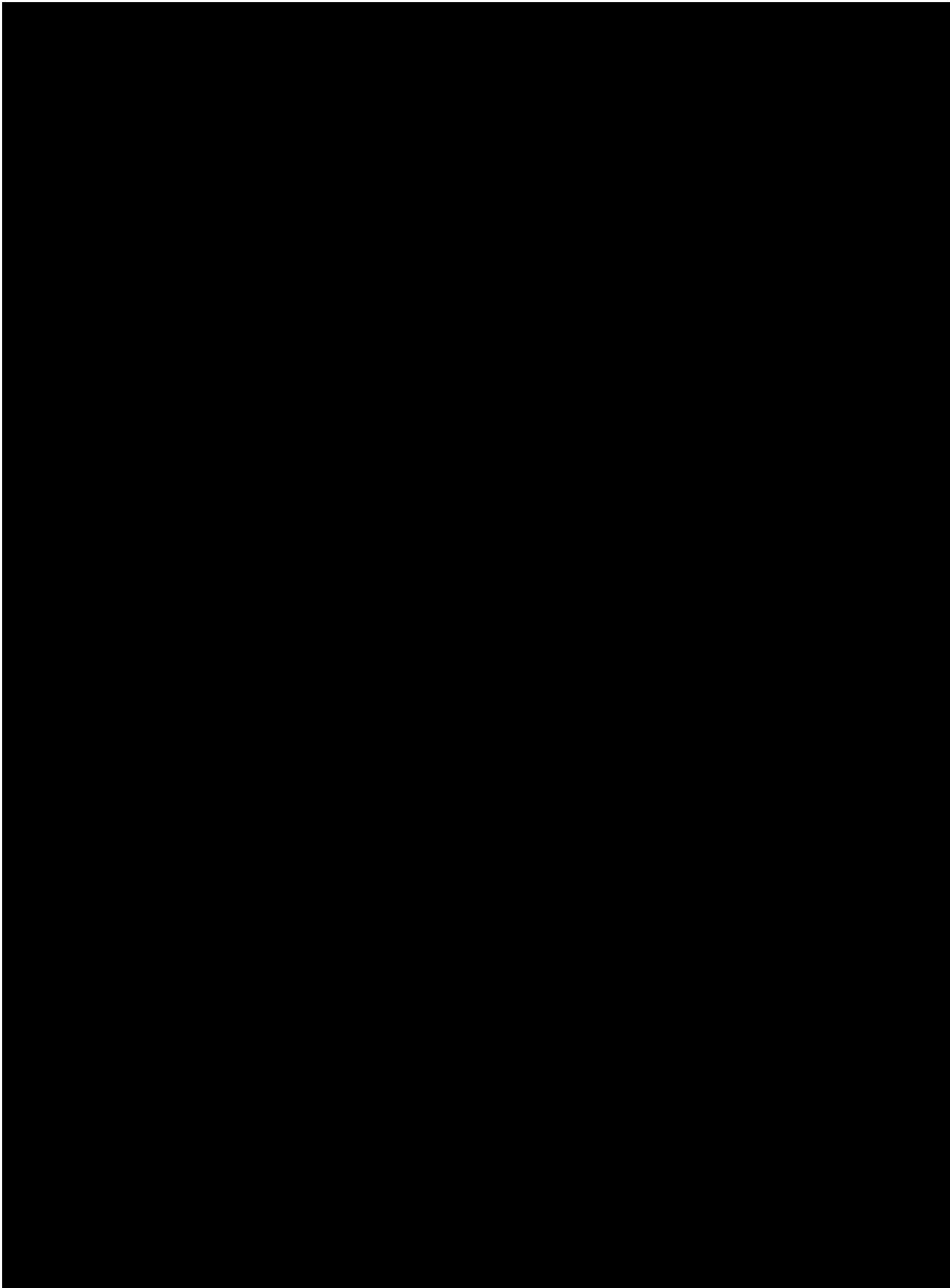
Appendix D Community Relations



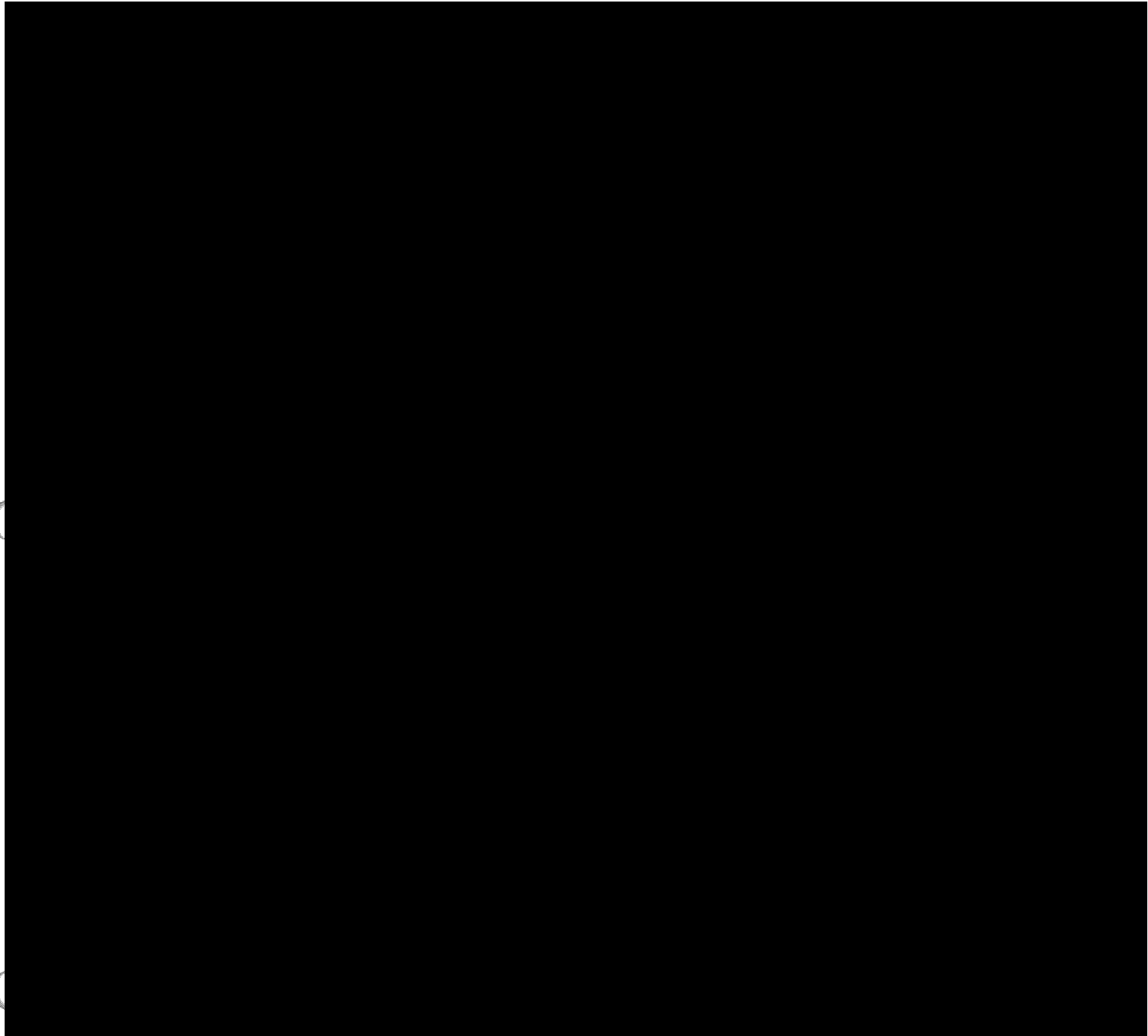
OFFICIAL



OFFICIAL



OFFICIAL



OFFICIAL

Appendix E Sustainability

E.1 General

- (a) The Asset Manager must comply with and ensure that the Sustainability Objectives listed in section 1(b) below, are addressed throughout the performance of the AM Services and ensure that sustainability is embedded into the AM Services to enhance the whole of life environmental, social and economic sustainability outcomes of the project.
- (b) The Sustainability Objectives are defined as:
- (i) demonstrate sustainability leadership and continual improvement;
 - (ii) protect and enhance the natural environment and local heritage;
 - (iii) contribute to liveable communities (ease congestion, connect communities, integrate land use and transport planning and facilitate urban revitalisation);
 - (iv) optimise resource efficiency (materials, energy, water, land) and waste management);
 - (v) increase resilience to future climate;
 - (vi) design allows for future transport needs (transport modes, connectivity for multi-modal extensions, access points);
 - (vii) sustainable procurement – whole of life environmental, social and economic considerations; and
 - (viii) maximise equitable training and employment opportunities.
- (c) The Asset Manager must, as a minimum achieve the sustainability requirements provided in section 2 of this Appendix.

E.2 Sustainability Requirements

E.2.1 Governance

- (a) The Asset Manager must develop, implement and maintain governance structures, processes and systems that ensure integration of all sustainability:
- (i) considerations (vision, commitments, principles, objectives and requirements);
 - (ii) initiatives;
 - (iii) knowledge sharing;

OFFICIAL

- (iv) monitoring; and
 - (v) reporting.
- (b) The Asset Manager must develop, implement and maintain a sustainability assurance framework to track compliance with NSW Government Policy and TfNSW sustainability policy documentation including the Roads and Maritime Environmental Sustainability Strategy 2019-2023, Transport for NSW Environment and Sustainability Policy, Sustainability Objectives and requirements as well as the Asset Manager's own sustainability commitments.
- (c) Sustainability Objectives and the sustainability requirements of the Deed must be included in the Asset Manager's AM Services Plans including the Sustainability Management Plan.

E.3 Climate Change

- (a) Twelve months prior to the end of the Initial Asset Management Phase and Asset Management Phase, the Asset Manager must provide all assistance to enable the Principal to undertake an operational climate change risk assessment for the project in accordance with AS 5334-2013 (Climate change adaptation for settlements and infrastructure - A risk based approach).
- (b) The Asset Manager must identify and implement adaptation measures to comprehensively address 'extreme' and 'high' rated risks (risks assessed and rated using AS 5334-2013).

E.4 Energy and Carbon

- (a) The Asset Manager must develop and implement an Energy Efficiency and Greenhouse Gas Emissions Strategy and Management Plan, as part of their Sustainability Management Plan that identifies processes and methods to:
- (i) improve energy efficiency; and
 - (ii) reduce greenhouse gas emissions.
- (b) The Asset Manager must, two years after the commencement of the Initial Asset Management Phase for the SHT Motorway, and two years after the commencement of Asset Management Phase for the WHT Motorway, and every five years thereafter, demonstrate that opportunities to maximise operational energy efficiency have been identified and analysed (whole of life costs/benefits must be estimated for each feasible opportunity analysed).
- (c) The Asset Manager must monitor and record annual operational energy use and greenhouse gas emissions (at least Scope 1 and 2 emissions) during the Initial Asset Management Phase and Asset Management Phase in accordance with the NGER Legislation.

- (d) The Asset Manager must comply with NSW Government Policy with respect to the implementation of energy efficiency measures when refurbishing and refitting Motorways facilities.

E.5 Materials and Waste

- (a) The Asset Manager must demonstrate, two years after the commencement of the Initial Asset Management Phase, and every five years thereafter, that opportunities to reduce material use during the AM Services have been identified and analysed (whole of life costs/benefits must be estimated for each feasible opportunity analysed).
- (b) The Asset Manager must, two years after the commencement of the Initial Asset Management Phase, and every 5 years thereafter, demonstrate that during the AM Services, opportunities have been fully investigated to:
 - (i) minimise waste generation;
 - (ii) maximise waste segregation and storage for different waste streams; and
 - (iii) maximise waste reuse; recycling; and landfill diversion.
- (c) The Asset Manager must monitor, record and report quantities of waste to be reused/recycled (for each waste material type, for example asphalt) during AM Services.

E.6 Water Efficiency

- (a) The Asset Manager must minimise water use and maximise water reuse during the AM Services.
- (b) The Asset Manager must, two years after the commencement of the Initial Asset Management Phase and every five years thereafter, demonstrate that opportunities to reduce water use (in particular potable water use) and reuse water (rainwater, stormwater, wastewater, groundwater) during the AM Services have been identified and analysed (costs/benefits must be estimated for each feasible opportunity analysed).
- (c) The Asset Manager must monitor, record and report during the AM Services the annual quantities of:
 - (i) water use (potable and non-potable); and
 - (ii) water reuse, treatment and harvesting.
- (d) If no cost is incurred by the Asset Manager, the Asset Manager must facilitate third party access to and usage of excess groundwater and advise the Principal prior to proceeding and to seek the Principal's approval which must be gained prior to its usage.

E.7 Sustainable Procurement

- (a) The Asset Manager must identify and implement sustainable procurement initiatives to enhance the whole of life environmental, social and economic sustainability outcomes of the project through the supply chain (including subcontractors).
- (b) The Asset Manager must develop, implement and maintain a system to inform subcontractors of the sustainability procurement requirements.
- (c) The Asset Manager must prioritise procurement from local suppliers and businesses where practical.

E.8 Reporting

E.8.1 Sustainability Reporting Requirements

- (a) During operation the Asset Manager must prepare and submit to the Principal an annual Sustainability Report within 60 Business Days after the end of each annual reporting period. The reports must be easy to understand and suitable for publication on the TfNSW website and in such a format as required by the Principal.
- (b) The sustainability reports must as a minimum include/address the following:
 - (i) an executive summary;
 - (ii) up to date performance towards the achievement of the Sustainability Objectives and requirements;
 - (iii) status of the implementation of any climate change risk adaptation measures;
 - (iv) details of continual improvement initiatives/actions undertaken by the Asset Manager;
 - (v) compliance with the sustainable procurement requirements;
 - (vi) the annual:
 - A. electricity use (including per cent of renewable energy and/or offsets purchased) and any electricity generated onsite;
 - B. fuel use by type (diesel, petrol);
 - C. greenhouse gas emissions (in tonnes of carbon dioxide equivalents per month (tCO₂-e/month));
 - D. volume of water (total, potable and non-potable) used;

- E. volume of water reused/recycled;
- F. quantity (tonnes) of waste: avoided; reduced; reused; recycled; disposed to landfill;
- G. quantity (tonnes) of recycled material used; and

(vii) the performance towards the achievement of all other sustainability requirements/objectives/targets set out in the Sustainability Management Plan.

- (c) The Asset Manager must undertake an annual review of sustainability performance and where required strengthen targets to drive continual improvement within three months of the end of the yearly review period. The results of the annual review must be documented, provided to the Principal within 3 months of the end of the yearly review period.
- (d) During the Initial Asset Management Phase and Asset Management Phase, the Asset Manager must undertake an annual review of sustainability performance and strengthen targets to drive continual improvement.
- (e) The Asset Manager must provide a report on the status of response to all representations to the Principal on a monthly basis. This report must include the average and maximum times taken to respond to representations.

Appendix F Asset Information System Requirements

F.1 Asset Information System

- (a) An Asset information System must be provided for the SHT Motorway and WHT Motorway which:
- (i) at all times accurately represent the true status and condition of all Assets and all AM Services;
 - (ii) [REDACTED]
 - (iii) [REDACTED]
 - (iv) have the minimum functionality to support the asset management requirements specified in TfNSW Standard, T MU AM 02001 ST Asset Information and Register Requirements including but not limited to:
 - A. asset tracking;
 - B. asset inventory management;
 - C. asset Preventive Maintenance, Corrective Maintenance and predictive maintenance;
 - D. failure profile including operational impact assessment and failure history; and
 - E. asset work order management;
 - (v) maintains a record of the current, historical and projected future condition of each asset;
 - (vi) maintains a record of the Actual Residual Asset Life (when assessed) and projected Forecast Residual Asset Life.
 - (vii) includes the Asset Information Model and associated data and information that are incorporated in the Asset Information System (AIS);
 - (viii) includes defined and structured data allowing mapping to the AIM in accordance with T MU AM 02001 ST Asset Information and Register Requirements and the WHT SWTC Appendix C.8 Digital Engineering Requirements;

- (ix) for the WHT Motorway AIS is structured in alignment with T MU AM 02006 TI Asset Register and Data Dictionary and associated standards called up in T MU AM 02001 ST Asset Information and Register Requirements such that the Asset data received from the Main Works Contractor for the WHT Motorway can be directly imported in the WHT Motorway AIS;
 - (x) for the SHT Motorway AIS is structured in alignment with T MU AM 02006 TI Asset Register and Data Dictionary and associated standards called up in T MU AM 02001 ST Asset Information and Register Requirements;
 - (xi) maintains a digital record of the nature, extent, quantity, location, time and type of any maintenance activities performed by, or programmed to be performed by the Asset Manager in accordance with the asset data attributes defined in T MU AM 02006 TI Asset Register and Data Dictionary and any additional attributes the Asset Manager is required to add to meet the requirements of this clause in consultation with the Principal;
 - (xii) maintains a record of inspections, maintenance responses and the response times and any failure to meet the standards set out in the Technical Maintenance Plans;
 - (xiii) maintains a record of equipment calibration and third party accreditation;
 - (xiv) includes a method of reporting to the Principal on the performance of any asset on the Motorways by analysis of the specific condition and Defect information recorded for individual assets;
 - (xv) incorporates data from pavement performance and pavement conditions assessments;
 - (xvi) retains a historical record of the data and information. Each data item must be referenced with the date of the record as appropriate to the type of data; and
 - (xvii) is able to automatically receive and record performance and fault data from the OMCS of those assets controlled and monitored by the OMCS for the WHT Motorway and the SHT Motorway [REDACTED] and
 - (xviii) [REDACTED] compliant with the State Records Act 1998 (NSW).
- (b) The Principal and TfNSW must be provided with full and unrestricted read access to the WHT Motorway AIS and SHT Motorway AIS at all times during the Initial Asset Management Phase and Asset Management Phase.

F.2 Asset Information Model

- (a) Requirements for the Asset Information Model are set out in T MU AM 02001 ST Asset Information and Register Requirements and the WHT SWTC Appendix C.8 Digital Engineering Requirements.

Appendix G Not Used

OFFICIAL

Appendix H Design Review Guidance

Criteria	Details
Reliability	Does the design result in a reliable solution?
Availability	Does the design achieve acceptable levels of availability?
Maintainability	Does the design achieve a maintainable outcome?
Supportability	Is the design likely to be supportable for its expected economic life
Durability	Will the design meet design life requirements
Usability / Operability	Can the design be effectively and safely operated? For road user facing equipment, is it easy to use / easy to interpret with respect to displayed information
Upgradability / Modularity	Does the design support cost effective major repair, replacement, refurbishment, rehabilitation and upgrade?
TOTEX	Does the design minimise TOTEX?
Operational Safety	Does the design ensure the safety of motorists and road workers?
Safety in Design	Does the design effectively remove hazards or satisfactorily mitigate the risk?
Energy and Resources	Does the design allow energy and resources to be used effectively and achieve sustainability outcomes?
Traffic Management and Road Network integration	Does the design allow the WHT Motorway to be effectively integrated with the road network and support the coordination of traffic management measures across the network?
Incident Management	Does the design support the safe and effective management of Motorway Incidents?
Compliance with Environmental Documents;	Does the design comply with the Environmental Documents?
Emergency and Threat Management;	Does the design support effective emergency and threat management including emergencies resulting from natural hazard risks and human induced threats?
Cyber Security	Does the design comply with cyber security Codes and Standards?
System Safety Assurance	Does the design process consider System Safety Assurance?
Minimum Operating Equipment	Is the design robust and likely to prevent Carriageway closures as a result of Minimum Operating Equipment criteria not being met?
End of Life Disposal / Sustainability	Does the design consider the disposal of assets at the end of their life and maximise opportunities for recycling and reuse?

OFFICIAL

Appendix I Integrated Contract Management System

I.1 General

- (a) The ICMS must coordinate, integrate and align the protocols, processes and documentation relating to the AM Services, including:
- (i) the Quality Management System;
 - (ii) the Work Health and Safety Management System;
 - (iii) the Environmental Management System;
 - (iv) the asset management system;
 - (v) AM Services Plans;
 - (vi) records;
 - (vii) reports;
 - (viii) programs;
 - (ix) payments;
 - (x) licences
 - (xi) notices;
 - (xii) training
 - (xiii) certification;
 - (xiv) audits;
 - (xv) community enquires and complaints management; and
 - (xvi) interface and communication protocols.
- (b) The ICMS must include detailed procedures and processes to ensure that internal auditing is regularly and systematically undertaken.
- (c) Internal audits must be scheduled taking into account the status and importance of the activity being audited as well as results of previous audits.
- (d) As a minimum, the Asset Manager's internal audits must include the following on a monthly basis:

OFFICIAL

- (i) audit of up to 5% of the AM Services jointly selected with the Principal;
 - (ii) review of existing non-compliances, including confirmation of status; and
 - (iii) review compliance against all standards.
- (e) Where necessary, follow up audits shall be scheduled to ensure identified corrections, corrective actions and/or preventive actions implemented to disposition non-compliances are carried out in a timely fashion.

1.2 ICMS Manager

- (a) The Asset Manager must appoint a Quality Manager who will be responsible for the coordination of all issues including the Quality Management System.
- (b) As a minimum, the Quality Manager must be responsible for:
- (i) development, implementation and maintenance of the ICMS;
 - (ii) scheduling and coordination of internal ICMS audits;
 - (iii) coordinating compliance monitoring;
 - (iv) initiating and recording reviews of the ICMS;
 - (v) (implementation and coordination of the continual improvements of the ICMS;
 - (vi) implementation and coordination of non-compliance and Defect management including the management of corrections, corrective and preventive actions;
 - (vii) scheduling follow up audits to ensure the timely completion of identified corrections, corrective actions and/or preventive actions;
 - (viii) coordination of all ICMS certification related issues;
 - (ix) ICMS reporting; and
 - (x) attendance at scheduled meetings as required.

1.3 ICMS Independent Audits

- (a) The Principal may engage an independent auditor to:
- (i) review the ICMS;
 - (ii) audit the Asset Manager's systems, processes, procedures and records to determine their effectiveness in ensuring the successful performance of the AM Services;

OFFICIAL

- (iii) undertake periodic joint audits with the Asset Manager; and
 - (iv) undertake periodic independent audits of the AM Services.
- (b) The results of audits completed by the independent auditor must be included within the ICMS report.

I.4 ICMS Non-Compliance Records

- (a) The Asset Manager must ensure all non-compliances and potential non-compliances are accurately recorded and physical records are kept.
- (b) Records must include as a minimum:
- (i) description of the issues and details related to time, date and location of non-compliance;
 - (ii) details of personnel responsible for ensuring appropriate investigation and implementation of corrections, corrective actions and/or preventive actions;
 - (iii) corrections, corrective and/or preventive actions proposed to rectify the non-compliance;
 - (iv) target dates for the completion of all corrections, corrective and/or preventive actions; and
 - (v) ICMS improvements, to ensure the non-compliance does not occur again.

Appendix J Road Occupancy Licence

J.1 General

J.1.1 Introduction

- (a) This Appendix details the requirements for the preparation and submission of Road Occupancy Licence applications by the Asset Manager and the granting of Road Occupancy Licences (ROLs) by the Transport Management Centre (TMC) on behalf of TfNSW.

J.1.2 Definition of Terms

- (a) In this Appendix:
- (i) emergency is defined as an unforeseen event that requires urgent action to protect life or property, or an occasion when Emergency Services take control of a portion of the road network;
 - (ii) free flow of traffic is defined as the unimpeded traffic flow conditions on the existing road network prior to the commencement of any of the AM Services;
 - (iii) road occupancy is defined as any part of the AM Services, including maintenance of the existing road network, that will or is likely to delay, including obstruct, restrict, close, interfere with, slow or stop, the free flow of traffic on any Lane or shoulder of the existing road network or the Motorways. Road occupancies include, but are not limited to:
 - A. shoulder occupancies and/or closures;
 - B. lane occupancies and/or closures; and
 - C. any other event that causes delays to the free traffic flows.
 - (iv) delay is defined as the difference between a road user's travel time over a section of road under normal conditions and when roadworks is in progress; and
 - (v) the duration of a delay is defined as the total period of time during which the free flow of traffic is obstructed, restricted, closed, interfered with, slowed or stopped and includes the time taken to clear all stopped, slowed and queued traffic and return the traffic to free flow conditions.

J.1.3 Road Occupancy Licence

- (a) An ROL authorises the occupation of a portion of the road network that would normally be available for traffic. Except in the case of an emergency, or when directed by Emergency Services, an ROL must be obtained prior to the start of any work that:
 - (i) slows, stops or otherwise delays or affects the normal flow of traffic;
 - (ii) diverts traffic from its normal course along the Carriageway (including Lane closures, turning restrictions, side tracks, detours and diversions); or
 - (iii) occupies any portion of the road network, including road shoulders, that is normally available for vehicular or pedestrian traffic.
- (b) ROLs also set out the details of the road occupancies to which they apply, including the location, duration, timing and physical extent of the occupancies and the traffic capacity to be provided.
- (c) The Asset Manager has the responsibility for coordinating all works and implementing measures to minimise the adverse impacts on road users during the Initial Asset Management Phase and the Asset Management Phase. The ROL contains minimum compliance requirements for the occupation of a portion of the road network.

J.1.4 Periods for Implementation of Road Occupancies

- (a) Generally, a licence will not be granted for occupancies between 6.00am and 10.00am and 3.00pm and 7.00pm on weekdays.
- (b) The TMC will not grant ROLs to undertake work on the road network over the periods when special events take place. Road occupancies may also be prohibited at other times depending on the potential impacts on the road network, including those associated with occupancies on the road network that are proposed or have been granted to other parties.

J.1.5 Application for and Authority to Grant Licences

- (a) The Asset Manager must prepare and submit all ROL applications to the TMC.
- (b) The TMC grants, varies and revokes all ROLs. The TMC will review the ROL applications and will be responsible for their approval.
- (c) The granting or varying of an ROL does not:
 - (i) constitute approval by the TMC of any actions that relate to traffic safety, work health and safety or environmental issues and management;

 OFFICIAL

- (ii) relieve the Asset Manager or any person of their responsibility for compliance with legislation, regulations or established operational procedures; or
- (iii) change any management accountability or responsibility.

J.2 Considerations in Granting Road Occupancy Licences

J.2.1 General

- (a) In assessing an application and granting an ROL, due consideration will be given to:
 - (i) the type, location, timing and duration of the road occupancy;
 - (ii) special events or other known traffic peaks that may impact on traffic volumes during the period of the proposed road occupancy;
 - (iii) other demands for road space and occupancies; and
 - (iv) compliance of the application with the minimum road network and traffic systems conditions to be maintained, including those detailed in Appendix C.5 of the Main Works SWTCs during the AM Services.
- (b) ROLs will be granted on a coordinated basis to ensure that road users do not experience excessive delays due to frequent and/or concurrent roadworks.

J.2.2 Traffic and Transport Safety and Efficiency Targets

- (a) Road occupancies must comply with the targets, objectives and performance indicators for the road network and traffic systems, including those detailed in Appendix C. ROLs will only be granted for those applications that satisfy the specified targets, objectives and performance indicators.

J.2.3 Capacity

- (a) The work arrangements must provide sufficient roadway capacity to carry the traffic volumes that will pass through the site during the period of the road occupancy. ROLs will not be granted for works where traffic volumes, including those generated by special events, are likely to exceed the capacity of the work sites at any time during the periods of the road occupancies.
- (b) Roadway capacity will be assessed using the Austroads Guide to Traffic Engineering Practice Part 2 – 'Roadway Capacity'. In assessing the capacity requirements, the TMC will consider:
 - (i) the AADT and hourly, daily and seasonal variations in traffic volumes;
 - (ii) directional morning and afternoon peak flows;

OFFICIAL

- (iii) holiday traffic;
 - (iv) local special events, including show days, tourist festivals and sporting events;
 - (v) abnormal local traffic movements; and
 - (vi) traffic and transport network model outputs.
- (c) Output from the traffic and transport network models must be submitted with each ROL for occupancies that involve a change to the road networks and traffic systems of three or more days duration and must include:
- (i) a comparison of all performance indicators between the validated base case, the current and the proposed future operating conditions;
 - (ii) the current and the proposed future operating conditions; and
 - (iii) a soft copy of the model that permits viewing of all traffic and transport movements in the whole road network.

J.2.4 Traffic Control Plans

- (a) Prior to undertaking any AM Services activity, the Asset Manager must prepare traffic control plans, which include details of all provisions for bus, motor vehicle, cyclist, pedestrian and disabled person movements for each stage of the construction activity.
- (b) Traffic control plans associated with any of the AM Services must be developed on the basis of the following documents and in the order of precedence of:
- (i) TfNSW Specification D&C G10;
 - (ii) TfNSW Traffic Control at Worksites Manual;
 - (iii) AS 1742.3 - Traffic Control Devices for Works on Roads; and
 - (iv) Section 4.14 of the TfNSW 'Interim Guide to Signs and Markings' Manual.
- (c) Traffic control plans must be included with ROL applications and must be regularly reviewed and modified in conjunction with TMC and Emergency Services providers.

J.2.5 Delay

- (a) ROL applications will be assessed and granted based on levels of delay that are acceptable to the TMC and also to the road users affected by the delay, as deemed by the TMC.

J.2.6 Coordination

- (a) Applications for ROLs will be assessed together with all other demands, both internal and external to the project, for road space and occupancies. Prior to the submission of all applications, the Asset Manager must liaise with the TMC, State Transit Authority, local bus companies, relevant local councils, the Police Local Area Commands, the Environment Protection Authority, and the toll road leaseholders and Adjacent Motorway operators, and all other relevant stakeholders to identify and manage issues relating to and resulting from the occupation of a portion of the road network.
- (b) ROLs will be granted on a coordinated basis to ensure that road users do not experience excessive delays due to frequent and/or concurrent roadworks

J.3 Applications for Road Occupancy Licences

J.3.1 Timing of Applications

- (a) Applications must be submitted a minimum of 10 Business Days prior to the proposed occupation of the road. The TMC will grant or reject applications within this period or grant an approval for a varied road occupancy.
- (b) A prompt reply will be given to the Asset Manager, by the TMC, outlining any issue/s or problem/s to ensure the Asset Manager has time to rectify any issue/s or problem/s which may inhibit the approval within the 10 Business Days approval period.
- (c) Applications for Carriageway or full road closures or works that will result in significant impacts to the traffic and transport network require considerably longer than the 10 Business Day approval period. Consultation with TfNSW and TMC should commence months in advance.

J.3.2 Format and Content

- (a) An application for a Road Occupancy Licence must be submitted to TfNSW on a standard Application Form, available on the TfNSW website, or through the means requested by TfNSW and the TMC. An application must be completed for each activity that will occupy the road.
- (b) Together with all calculations and workings that have been generated in support of the application, the application must contain:
 - (i) detailed traffic management plans and traffic control plans that are integrated and coordinated for the AM Services over the period of the occupancy, showing the proposed changes to the road network for each stage of the occupancy. The traffic management plans must provide information on the location, extent and duration of all traffic changes to the road network during the occupancy. Individual intersection plans, with lane markings, must be provided at a scale of 1:200 to allow for proper traffic assessment of proposed intersection changes;

OFFICIAL

- (ii) locations, durations and layouts of existing approved ROLs;
- (iii) future ROLs that will run concurrently with the proposed ROL;
- (iv) responses, comments and approvals from the stakeholders identified in section 2.6(a) above;
- (v) type of work proposed (deviation, widening, pavement reconstruction, bridge construction, etc.);
- (vi) location and extent of the work;
- (vii) anticipated start and end dates of the work;
- (viii) areas of road to be occupied;
- (ix) proposed timing of road occupation (times of day, days of week);
- (x) all localised and cumulative impacts, effects and consequences of the occupancy, including the predicted performance indicators and comparisons with the specified targets, expected delays to traffic, proposed stoppages to the traffic flow and the expected duration of the stoppages;
- (xi) type of traffic control;
- (xii) types of information signs to be provided, including VMS and the proposed messages;
- (xiii) any proposed alternative routes or side tracks;
- (xiv) existing and proposed temporary speed limits;
- (xv) information management strategy; and
- (xvi) community consultation and liaison strategy.

J.4 Granting Road Occupancy Licences

- (a) In evaluating Road Occupancy Licence applications, the TMC will consider the effects of the occupancy on traffic flows and will grant licences based on levels of delay that are acceptable to the TMC.

J.4.2 General Conditions

- (a) ROLs will be granted under the conditions that it is the responsibility of the Asset Manager to ensure that the works are carried out safely and, as a minimum, in accordance with applicable legislation, regulations, Australian Standards and standard TfNSW specifications and procedures.

The Asset Manager will be required to coordinate all works and implement strategies to minimise the adverse impact on road users.

- (b) The TMC reserves the right to close any occupancy that has adverse impacts on traffic and to review and alter licence conditions at any stage of the road occupancy.
- (c) The conditions nominated in ROLs must not be varied by the Asset Manager without the approval of the TMC, except in the case of an emergency. In the case of emergency work, the TMC must be advised of the situation and the resulting actions immediately, and if possible, before the start of the work.

J.4.3 Conditions

- (a) The TMC will impose conditions on ROLs that are considered necessary to manage the impact of the occupancies at the work site.
- (b) These conditions typically cover:
 - (i) restrictions on the times, dates or days of the week during which road space may be occupied;
 - (ii) traffic capacity to be provided and provisions to accommodate peak traffic volumes at nominated times or nominated days;
 - (iii) measures to minimise queue lengths;
 - (iv) facilities or services to be provided at the sites of the occupancies;
 - (v) recording of road occupancies and traffic control measures used;
 - (vi) monitoring, recording and reporting on traffic and other conditions relevant to the occupancies, including delays experienced by road users, incidents or accidents that occur and complaints received;
 - (vii) community consultation and liaison; and
 - (viii) information management and measures to provide information to road users and local residents and businesses that will be affected by the occupancies, including distribution of the scheduled occupancies to the TMC and affected businesses, advertising circulars, fixed and variable message signage and use of print and electronic media.

J.5 Management and Monitoring of ROLs

- (a) The Asset Manager must maintain a current schedule of all approved and proposed road occupancies that will affect the road network over the following six-week period.

OFFICIAL

- (b) Each week the Asset Manager must provide a forecast of the proposed road occupancies for the following week to the Principal and TfNSW. The forecast must be in the form of a schedule running from Monday to Sunday and contain full details on the locations and timing of all proposed road occupancies. The forecast must be provided to the Principal and TfNSW by 9.00am on the Thursday of the week preceding the week being forecast.
- (c) A copy of any ROL must be available:
 - (i) at the location of the relevant road occupancy; and
 - (ii) at all times when construction activities associated with the ROL are taking place.
- (d) The Asset Manager must make available to the Principal, or TfNSW, surveillance officers upon their requests and at the location of the road occupancy, a copy of the ROL.
- (e) All the Asset Manager's personnel involved in the AM Services associated with the ROL must be:
 - (i) inducted in and made familiar with the ROL terms, conditions and requirements prior to the implementation of the road occupancy or their deployment in this element of the AM Services; and
 - (ii) regularly re-trained on the ROL terms, conditions and requirements throughout the period of the road occupancy.
- (f) An auditing program of road occupancies, including regular and frequent audits and inspections, must be implemented by the Asset Manager to ensure that:
 - (i) no unlicensed road occupancies are occurring;
 - (ii) the conditions of the licence are being met;
 - (iii) there is no late finishing roadwork; and
 - (iv) proper records of the occupancy are being kept.
- (g) The Asset Manager must also conduct regular travel time surveys for all occupancies to monitor travel times over the affected areas.
- (h) All complaints received in relation to road occupancies must be forwarded to the TMC together with recommendations on appropriate actions to rectify the situation.
- (i) Breaches of an occupation under an ROL may, at the absolute discretion of the TMC, result in the ROL being revoked.

J.6 Traffic Management Controls

J.6.1 Variable Message Signs

- (a) Over and above any other requirements in this AM Services Specification and Main Works SWTCs for the provision of variable message signs (VMS), a minimum of one additional variable message sign must be provided and installed on each approach to all road occupancies.
- (b) During the period of operation of the road occupancy, the VMS must be operated continuously to notify all road users of the road occupancy by displaying appropriate messages to this effect.
- (c) The VMS must have, and the Asset Manager must operate continuously, a remotely controlled 24-hour message change facility to make immediate changes to the messages on the VMS.
- (d) Where required by the conditions of an ROL, the VMS must be installed at least one week prior to the day of the implementation of the road occupancy to provide advance notification to all road users of the future road occupancy.

J.6.2 Roadworks Speed Limits and Zoning

- (a) Roadwork speed limits and zoning in road occupancies must comply with section 8.2 of the RTA's 'Traffic Control at Work Sites' manual and the RTA's NSW Speed Zoning Guidelines and Australian Standard AS 1742.3 'Manual and Uniform traffic control devices – Traffic controls for works on roads'.
- (b) Copies of speed zone authorisation applicable to any road occupancies must be available at the road occupancies for the duration of the road occupancies.
- (c) Roadwork speed limit signs must be a minimum Type 'C' size signs, as per the TfNSW signs register (available to the TfNSW website), duplicated on both sides of the Carriageway at any changes in the posted speed limits. The signs must be supported on two posts.

J.6.3 Closure of Shoulders or Auxiliary Lanes

- (a) Road occupancies involving closure of any shoulder or auxiliary lane, where auxiliary lane(s) exist, must provide a minimum of one travel lane in each direction at all times through the road occupancy.

J.6.4 Passage of Over-Dimension Heavy Vehicles

- (a) Road occupancies must be designed and implemented to allow for and accommodate the passage of over-dimension heavy vehicles through all the road occupancies. The Asset Manager must liaise with TfNSW to establish communication protocols for the passage of over-dimension heavy vehicles through all road occupancies.

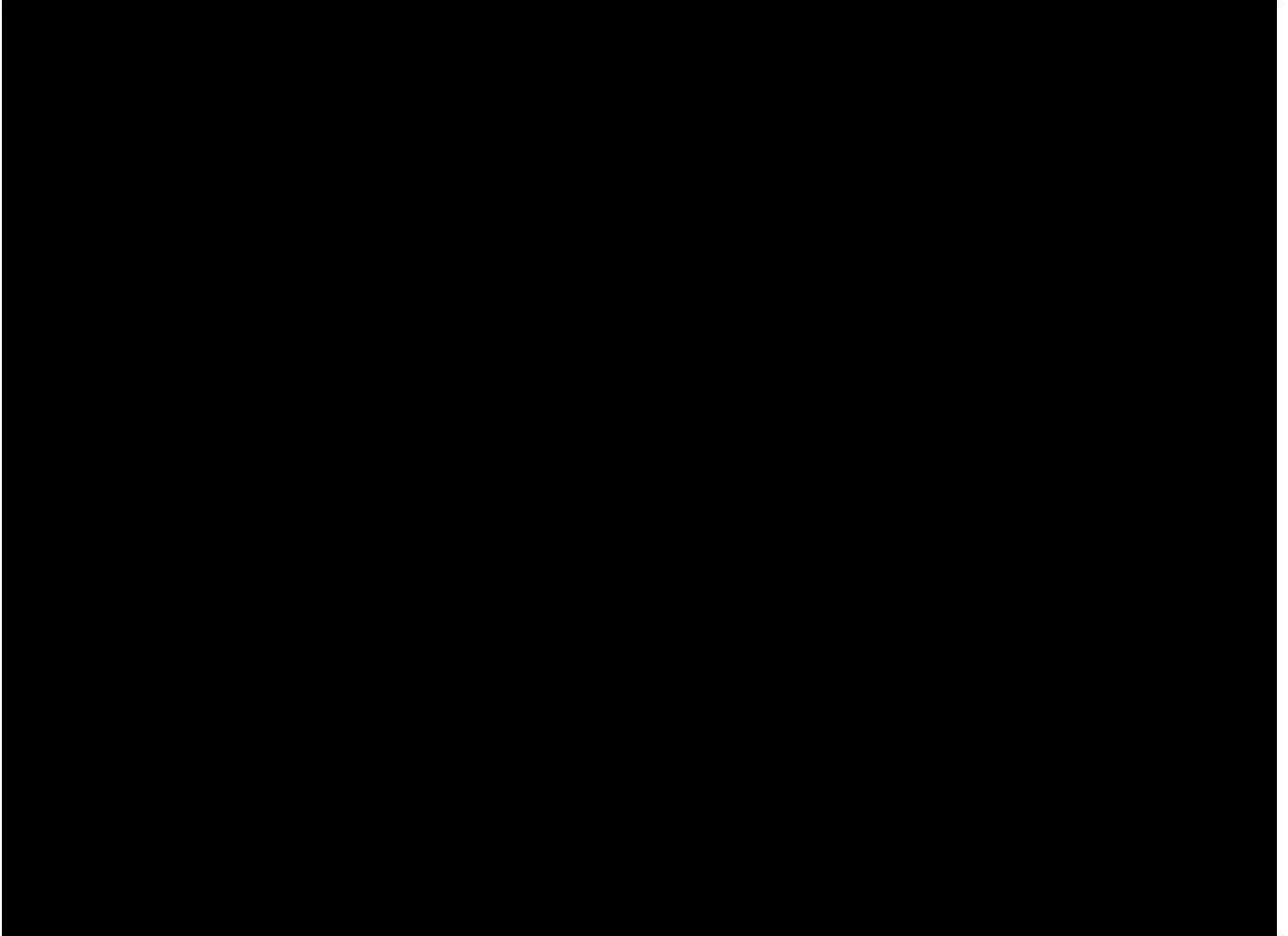
OFFICIAL

J.6.5 Traffic Manager's Responsibilities

- (a) The Asset Manager's Traffic Manager must:
- (i) be responsible for the implementation of ROLs and must continuously monitor the implementation and operation of all road occupancies to ensure that they are compliant with the ROLs, including but not limited to:
 - A. monitoring and quantifying the durations of traffic flow delays;
 - B. monitoring, measuring and recording traffic queue lengths, including the maximum traffic queue lengths in each direction and the total occupancy or stoppage time;
 - C. maintaining and adjusting traffic control measures and devices to assist prevailing traffic flows, minimise Lane and shoulder occupancies and any lost traffic flow capacity and minimise traffic flow delay durations and queuing;
 - D. monitoring of over-dimension heavy vehicle movements; and
 - E. updating and keeping TfNSW and the Principal and TMC informed of the status and traffic conditions of all active ROLs in operation.
 - (ii) report immediately to the Principal and TfNSW the occurrence of all delays, including those caused by incidents, to the free flow of traffic of greater than ten minutes and or traffic queue lengths of greater than 1000 m;
 - (iii) be contactable at all times (seven days per week and 24 hours per day) to receive and answer traffic/incident related inquiries from TfNSW and the Principal TMC and the Police; and
 - (iv) produce records of all road occupancies and forward records of all traffic flow delays and durations, traffic queue lengths and other ROL related matters to the Principal and TfNSW by 9.00am on the Thursday following the week being recorded.

OFFICIAL

Appendix K Minimum Maintenance and Asset Condition Requirements



Appendix L Codes and Standards

(a) The Codes and Standards include:

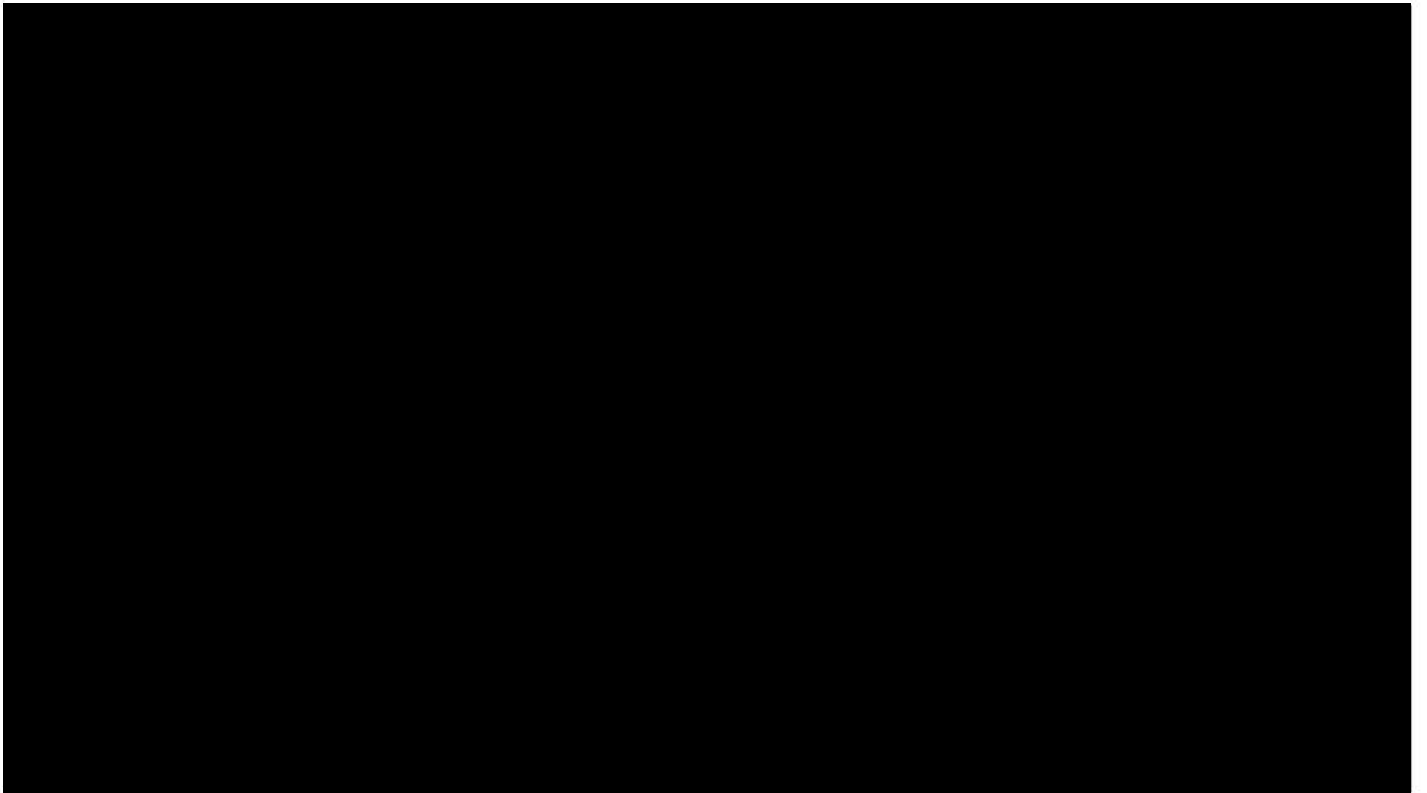
- (i) with respect to the WHT Motorway the codes and standards referred to in the WHT SWTC;
- (ii) with respect to the Motorways the codes and standards listed in the table below.

Reference	Title	
T MU AM 1002 MA	Maintenance Requirements Analysis Manual	
T MU AM 1003 ST	Development of Technical Maintenance Plans	
T MU AM 1006 ST	Asset Location Classification	
T MU AM 1007 TI	Asset Reference Codes Register	
T MU AM 1008 ST	Technical Maintenance Plans and Coding System	
T MU AM 1009 TI	Technical Maintenance Coding Register	
T MU AM 01012 ST	Engineering Documents Requirements	
T MU AM 01014 ST	Asset Information Handover Requirements	
T MU AM 02001 ST	Asset Information and Register Requirements	
T MU AM 02002 TI	Asset Classification System	
T MU AM 02003 TI	Register of Asset Information Systems and Repositories	
T MU AM 02004 ST	Management of Asset Information	
T MU AM 02006 TI	Asset Register and Data Dictionary	
T MU AM 06002 GU	AEO Guide to Reliability, Availability and Maintainability	
T MU AM 06006 ST	Systems Engineering	
T MU AM 06009 ST	Maintenance Concept Definition	
T MU MD 00006 ST	Engineering Drawings and CAD Requirements	
T MU AM 10014 ST	TfNSW Data and Information Asset Management Policy	
TPP 19-07	NSW Treasury TPP 19-07 Asset Management Policy for the NSW Public Sector	
AS 1742.3	Manual and Uniform Traffic Control Devices	
ISO 55000	Asset Management Overview, Principles and terminology	

OFFICIAL

Reference	Title	
ISO 55001	Asset Management - Management Systems – Requirements	
ISO 55002	Asset Management - Management Systems – Guidelines on the application of ISO 55001	
ISO/IEC 15288	Systems and Software Engineering - System life cycle processes	
ISO/IEC 19770-1	Information Technology – Software asset management – Part 1: Process and Tiered Assessment of Conformance	
ISO 27001	Information technology — Security techniques — Information security management systems — Requirements	
ISO 27002	Information technology — Security techniques — Code of practice for information security controls	

Appendix M Domain Tunnel Controlled Devices



Appendix N Ground and Infrastructure Monitoring

N.1 General

- (a) The Asset Manager must ensure the AM Services have no adverse impacts, other than the impacts that are acknowledged in the Environmental Documents, on the existing ground conditions or on the performance of any infrastructure (including roads, railways, Utility Services, buildings and any part of the Motorways) including any impact on the:
- (i) amenity;
 - (ii) aesthetics;
 - (iii) durability;
 - (iv) function;
 - (v) user benefits;
 - (vi) safety during construction and operation;
 - (vii) future known developments; and
 - (viii) environmental performance,
- (b) Throughout the Initial Asset Management Phase and the Asset Management Phase, the Asset Manager must monitor the actual effects on ground conditions and infrastructure of the Motorways and the AM Services and compare the actual effects to both the Predicted Effects and the Acceptable Effects.
- (c) If the actual effects exceed the Predicted Effects, the Asset Manager must review and, if necessary, re-evaluate the Predicted Effects and make any adjustment subsequently necessary to any aspects of the way the AM Services are undertaken to ensure that the Acceptable Effects are not exceeded.
- (d) The Asset Manager must continue to monitor the actual effects until it is demonstrated that the effects have fully materialised and that the Asset Manager has complied with paragraph (c) above.
- (e) Notwithstanding the Predicted Effects on infrastructure contemplated in paragraph (b), the Asset Manager must repair and reinstate infrastructure at the earliest opportunity so that the Asset Manager satisfies the requirements of paragraph (a) above in respect of each item of infrastructure.

- (f) The Asset Manager must promptly and progressively provide the Principal's Representative with monitoring results of the actual effects of the Motorways and the AM Services in a form which is directly comparable to the Acceptable Effects and Predicted Effects.
- (g) The Asset Manager must:
 - (i) continue to maintain and monitor any established monitoring stations or devices used to monitor the actual effects on ground conditions and infrastructure until otherwise instructed in writing by the Principal; and
 - (ii) make arrangements with owners and any occupier as required to access and maintain monitoring stations and devices.

N.2 SHT Motorways

- (a) The Asset Manager must engage a registered surveyor to undertake an annual survey of the SHT immersed tube to measure and monitor ground movement and settlement.
- (b) The Asset Manager must provide the result of the annual survey to TfNSW and the Principal within 20 Business Days of the completion of the survey.
- (c) If requested by the Principal, the Asset Manager must undertake any reasonable follow up surveys using a registered surveyor to confirm survey measurements and engineering assessments.

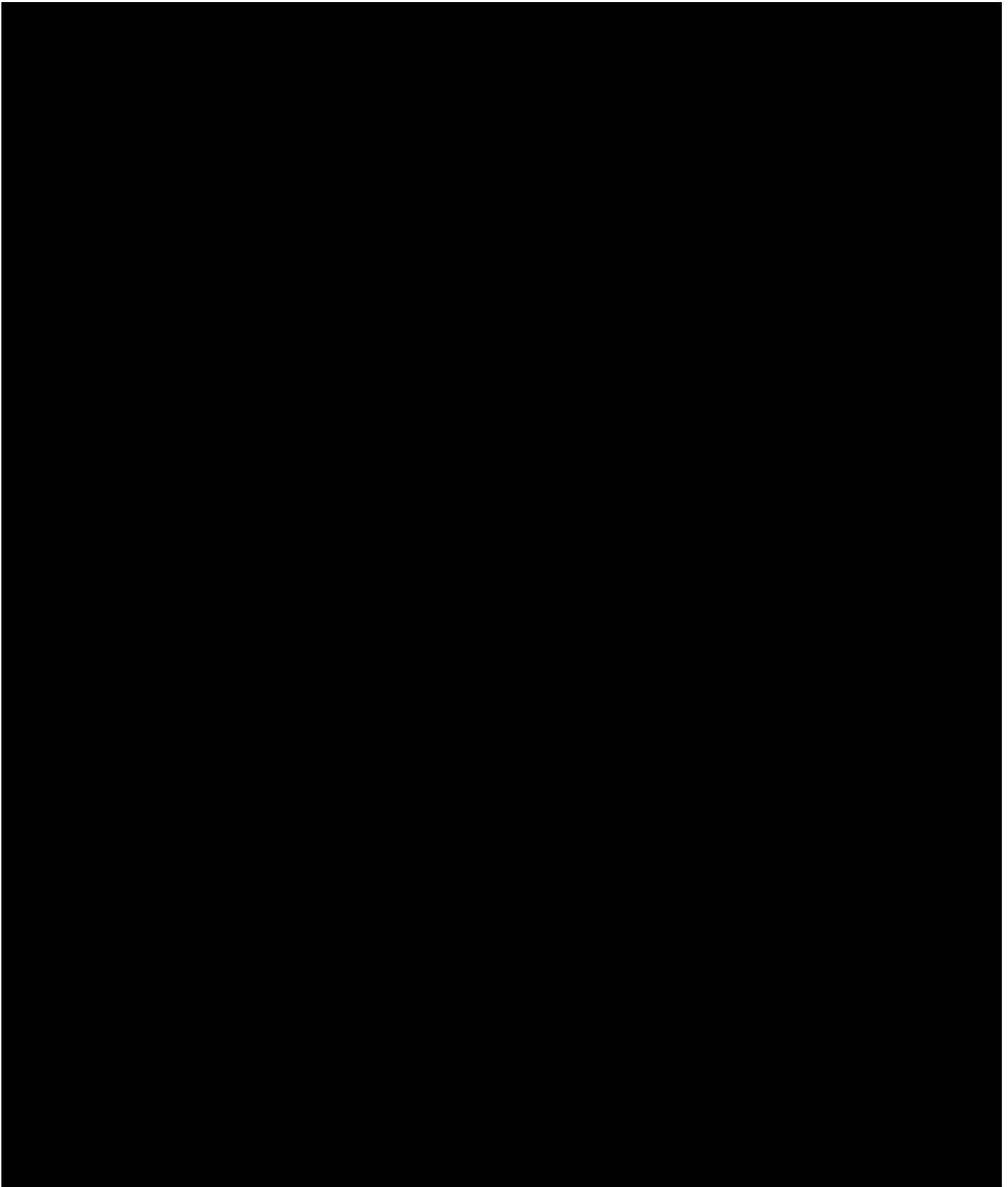
N.3 Domain Tunnel

Not Used

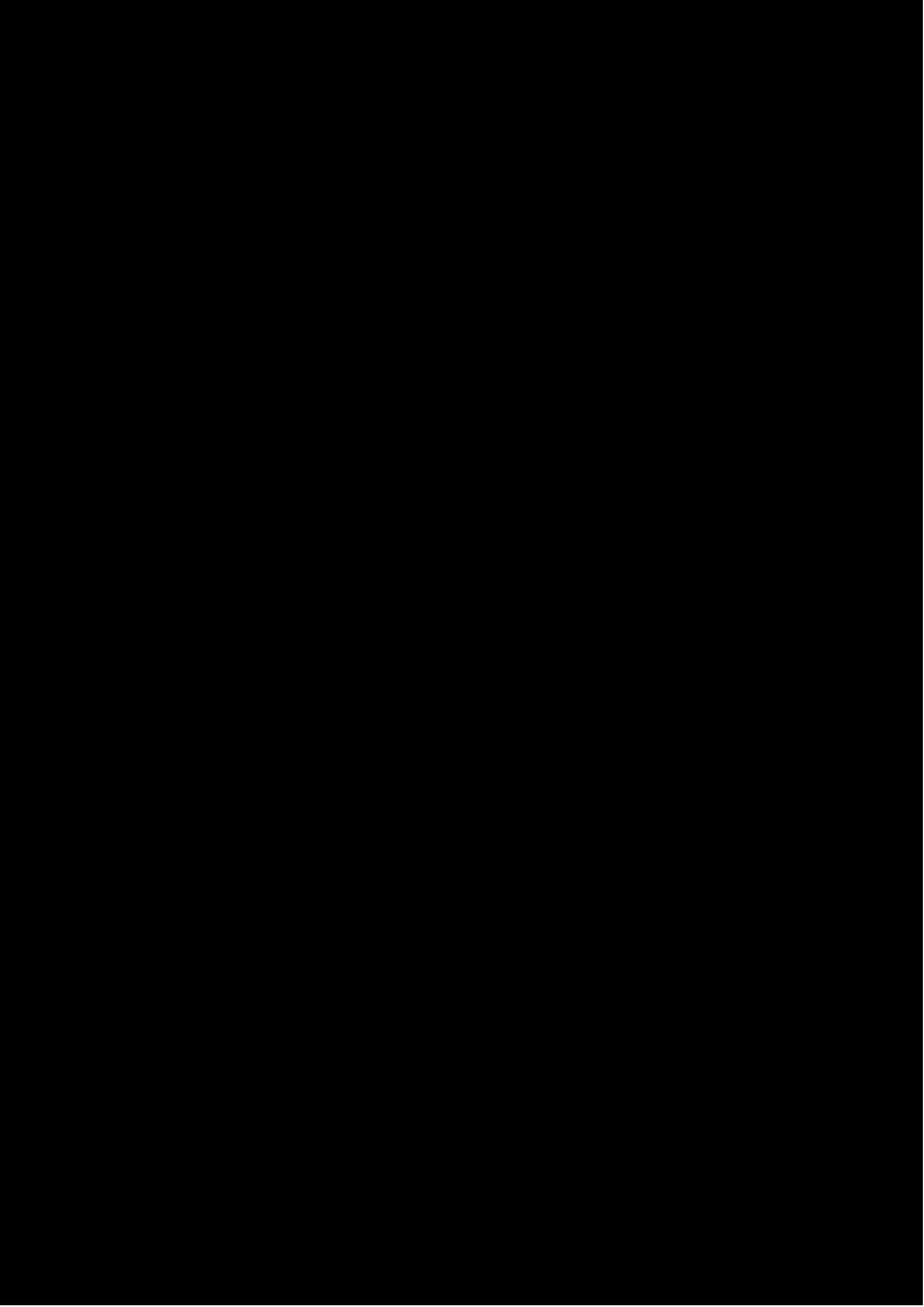
N.4 WHT Motorways

- (a) The Asset Manager must undertake ongoing ground and infrastructure monitoring as reasonably specified by the Main Works Contractor during the Asset Management Phase.

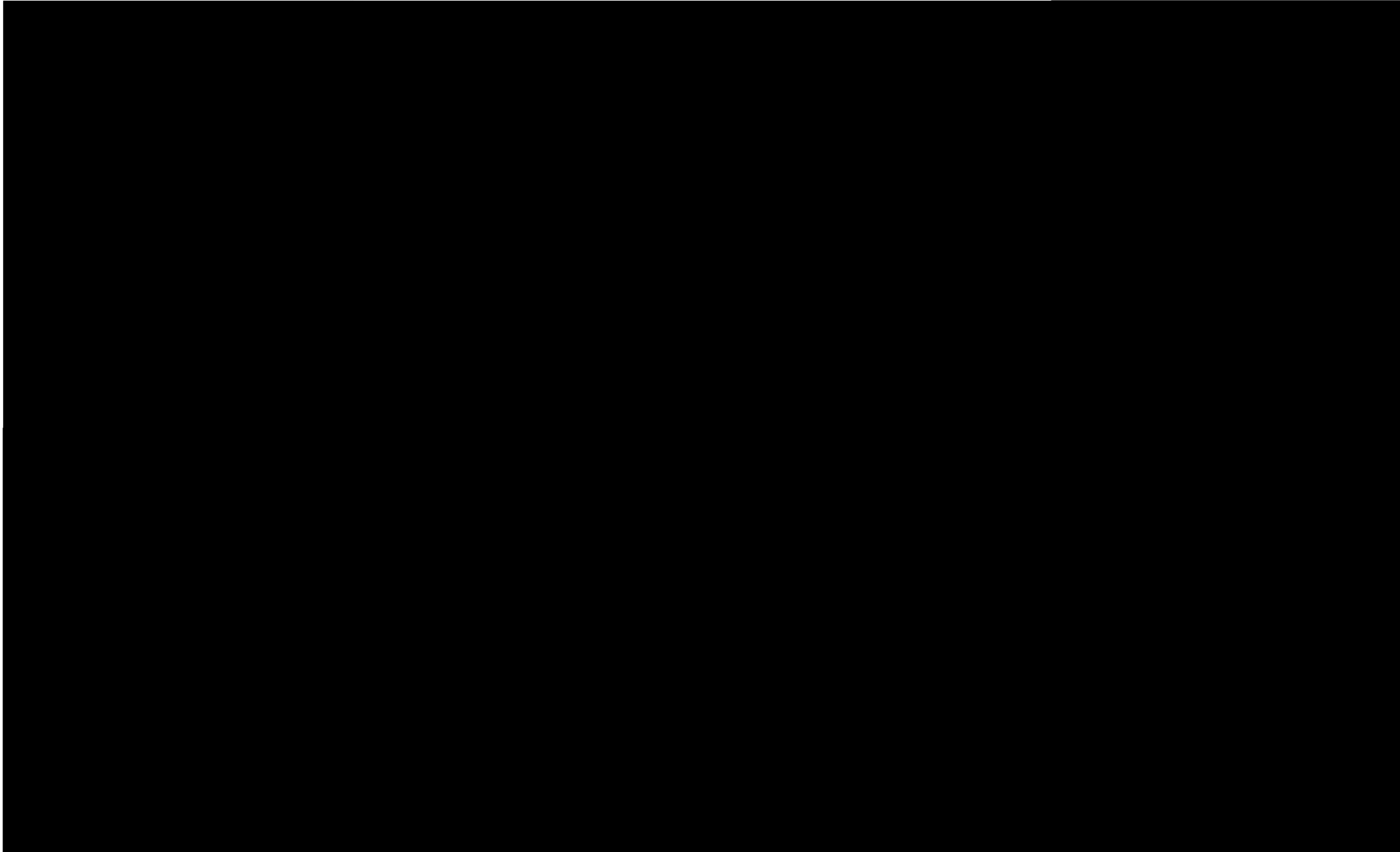
Appendix O Residual Life Assessed Assets

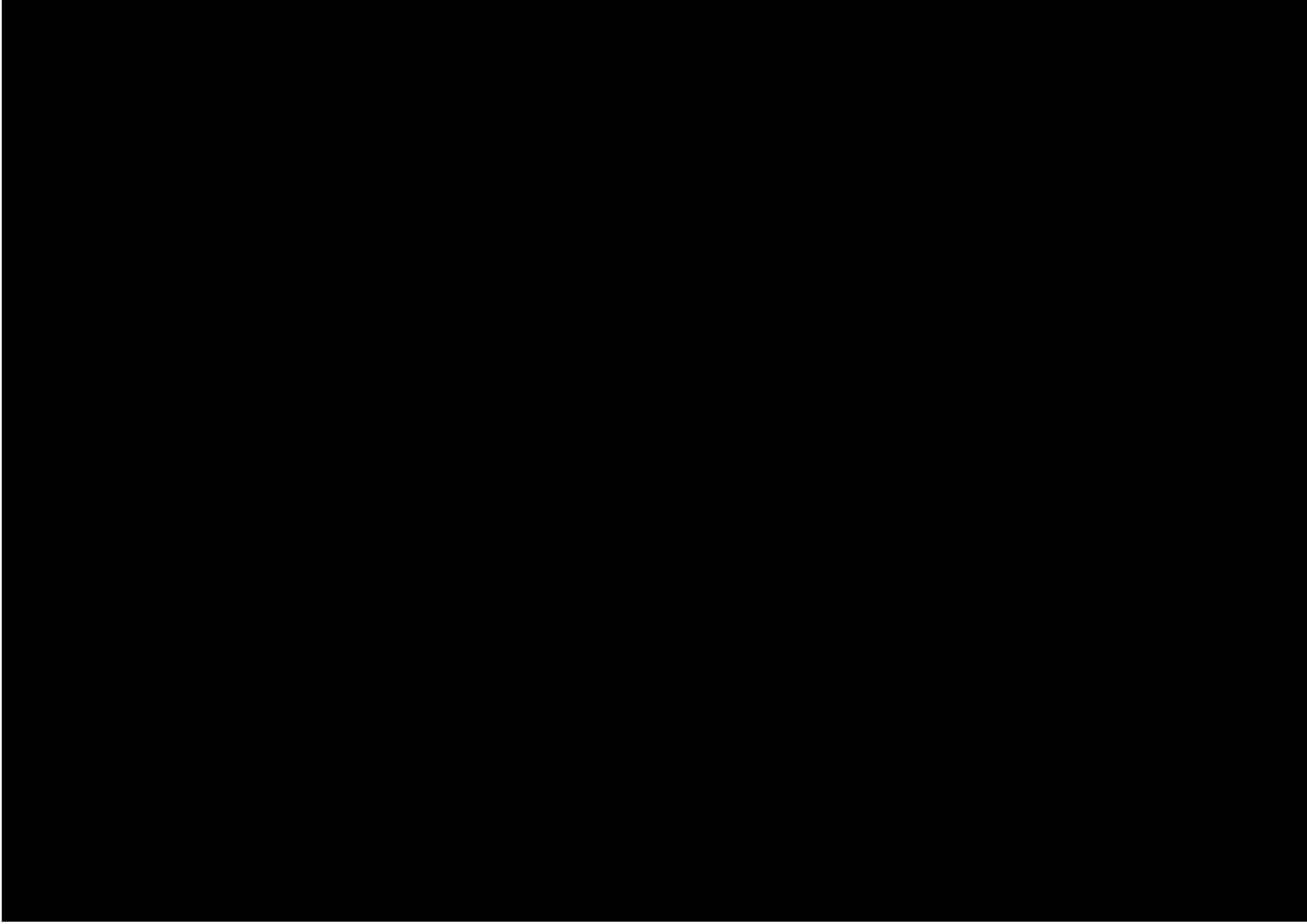


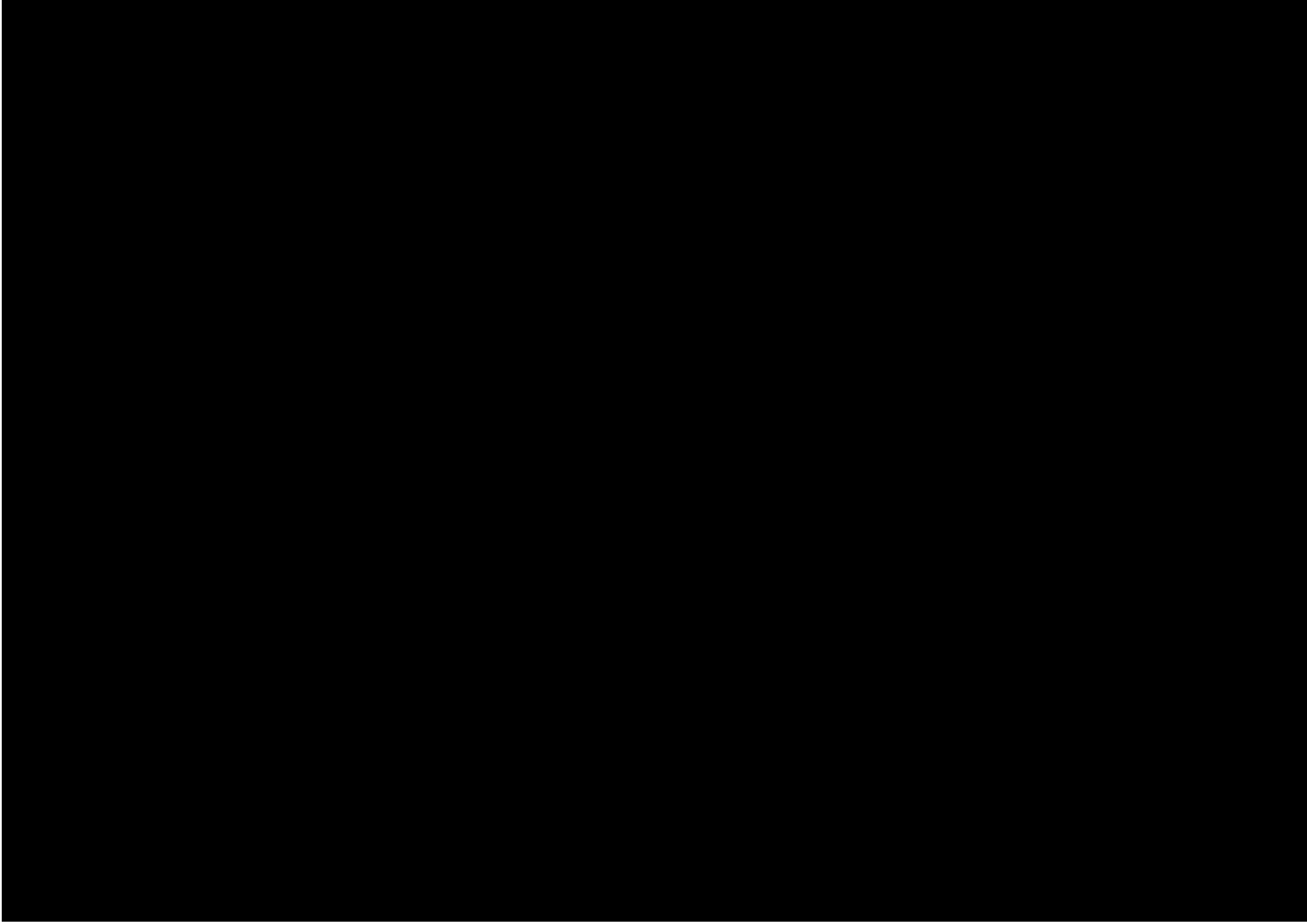
OFFICIAL



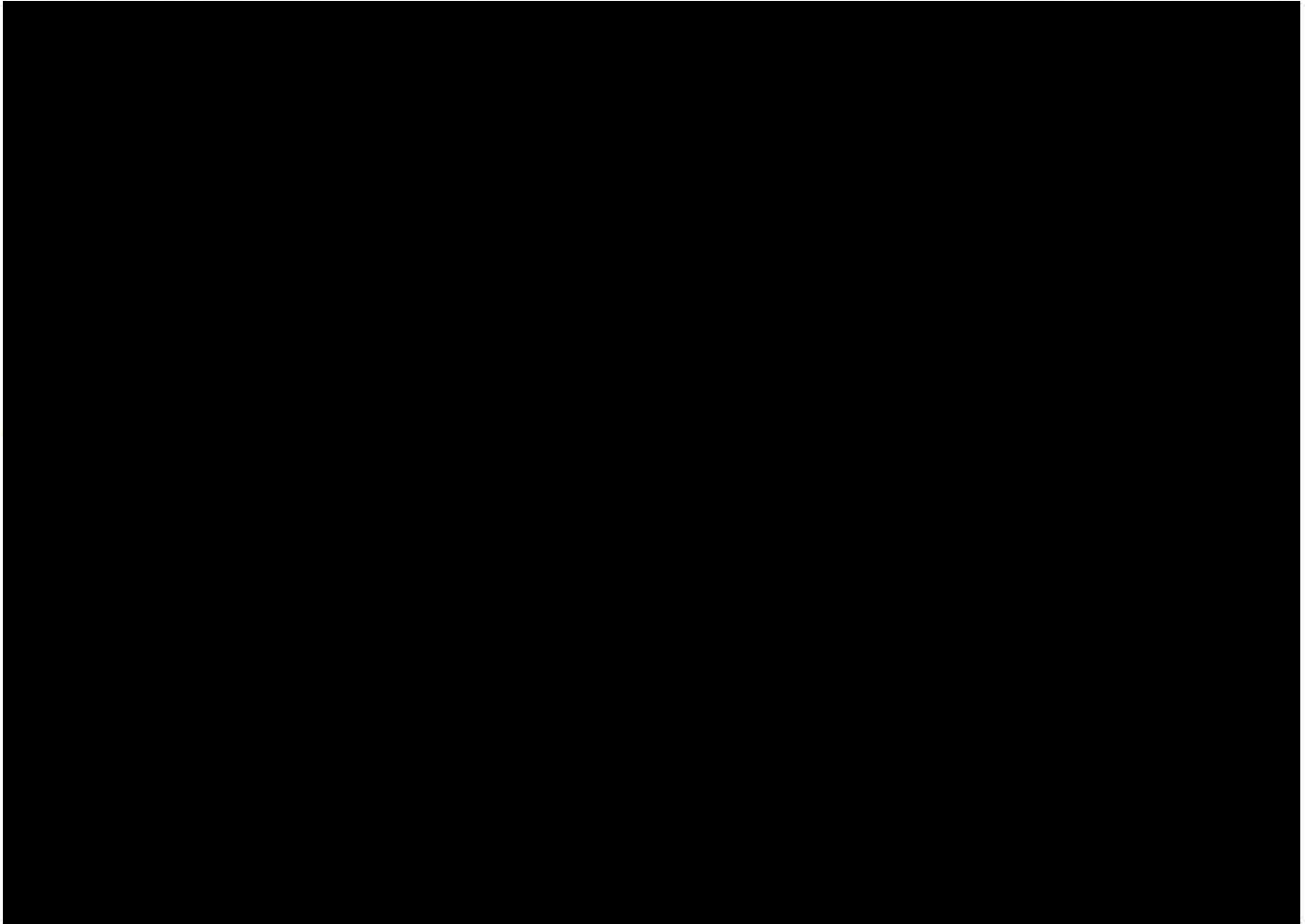
Appendix P Limited Liability Assets – Minimum Maintenance



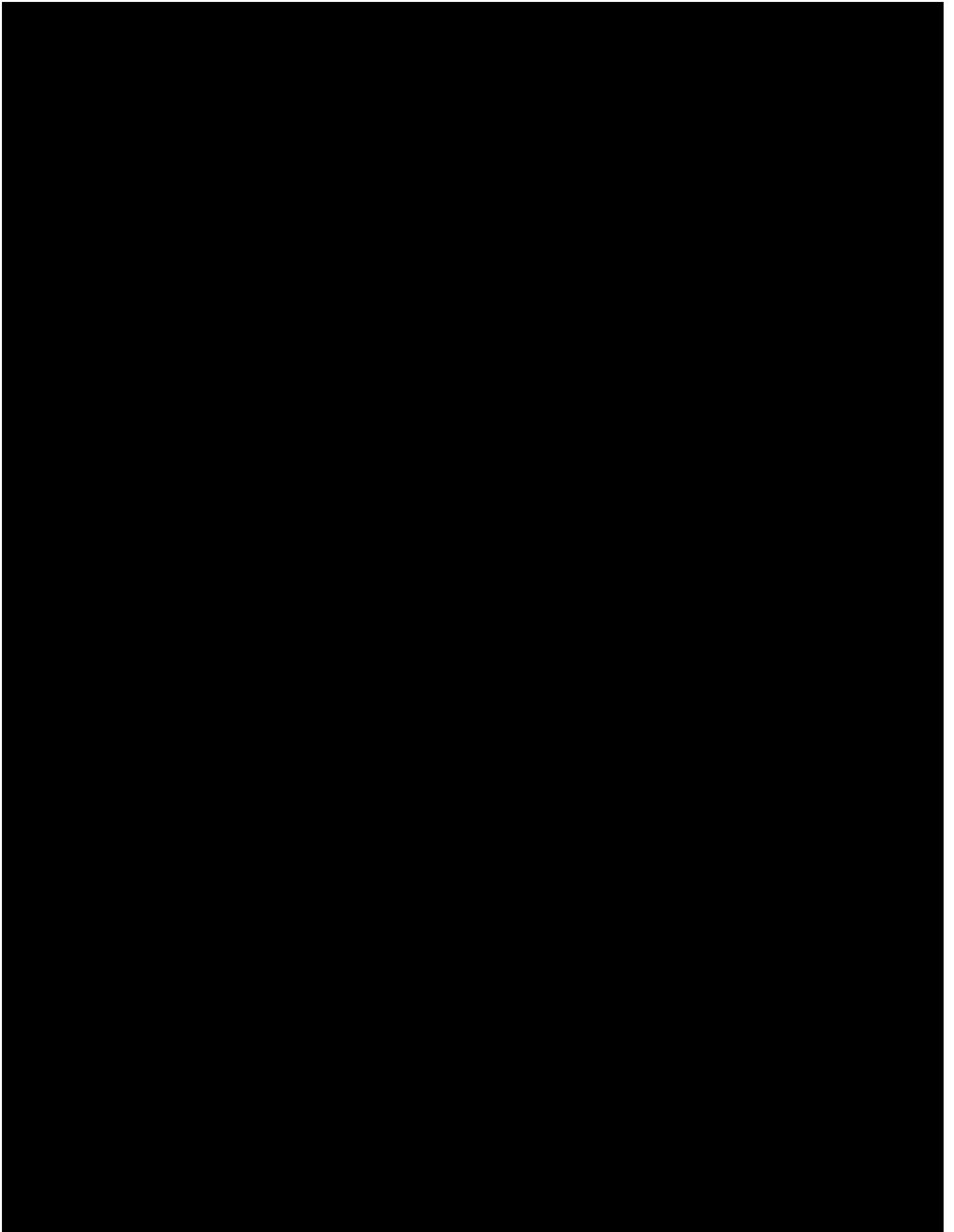




Appendix Q Reimbursable Services



Appendix R Management Commitments



SCHEDULE 34

Limited Liability Assets

SCHEDULE 35

Main Works Reference Design

The WHT Reference Design, which is included in this Schedule 35, is contained in Schedule 36 (Electronic Files) as an electronic file.

PART F – TECHNICAL

SCHEDULE 36

Electronic Files

Document Reference	Document Title	Type
07.01		Main Folder
07.01.01		Program
07.01.02		Document
07.01.03		Document
07.01.04		Document
07.01.05		Document
07.02		Main Folder
07.02.01		Document
07.03	03. Information Documents	Main Folder
	Refer to the document list provided in Schedule 14.	Folders and Documents
07.04		Main Folder
07.04.01		Document
07.05		Main Folder
07.05.01		Document
07.06		Main Folder
07.06.01		Sub-folder
07.06.01.01		Document
07.06.01.02		Document
07.06.01.03		Document
07.06.01.04		Document
07.06.01.05		Document
07.06.01.06		Document
07.06.01.07		Document

Document Reference	Document Title	Type
07.06.01.08		Document
07.06.01.09		Document
07.06.01.10		Document
07.06.01.11		Document
07.06.01.12		Document
07.06.01.13		Document
07.06.01.14		Document
07.06.01.15		Document
07.06.01.16		Document
07.06.01.17		Document
07.06.02		Document
07.06.03		Document
07.06.04		Document
07.06.05		Document
07.06.06		Document
07.07		Main Folder
07.07.01		Document
07.07.02		Document
07.07.03		Document
07.07.04		Document
07.07.05		Document
07.07.06		Document
07.07.07		Document

Document Reference	Document Title	Type
07.07.08		Document
07.07.09		Document
07.07.10		Document
07.07.11		Document
07.07.12		Document
07.07.13		Document
07.07.14		Document
07.07.15		Document
07.07.16		Document
07.07.17		Document
07.07.18		Document
07.07.19		Document
07.07.20		Document
07.07.21		Document
07.07.22		Document
07.07.23		Document
07.07.24		Document
07.07.25		Document
07.07.26		Document
07.08	08. Exhibit B - SHT Initial Condition Report	Main Folder
07.08.01	05.01.01.01 60639176-RPT-03_2 Asset Condition Assessment Rep.pdf	Document

Document Reference	Document Title	Type
07.09		Main Folder
07.09.01		Document
07.09.02		Document
07.09.03		Document
07.09.04		Document
07.09.05		Document
07.09.06		Document
07.09.07		Document
07.09.08		Document
07.09.09		Document
07.09.10		Document
07.09.11		Document

EXHIBIT A

(Initial Project Plans and Initial Asset Management Plans)

The Initial Project Plans and Initial Asset Management Plans, which are included in this Exhibit A, are contained in Schedule 36 (Electronic Files) as electronic files.

EXHIBIT B

(SHT Initial Condition Report)

The SHT Initial Condition Report, which is included in this Exhibit B, is contained in Schedule 36 (Electronic Files) as an electronic file.

EXHIBIT C

(Licensed Maintenance Area for the SHT Motorway)

The Licensed Maintenance Area, which is included in this Exhibit C, is contained in Schedule 36 (Electronic Files) as an electronic file.