

M7–M12 Integration Project Deed

Transport for NSW
Transport

Westlink Motorway Limited
Westlink

WSO Co Pty Ltd
WSO Co

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 2652/81011812

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Table of Contents

1.	Definitions and interpretation	6
1.1	Meanings given in the Amended M7 Motorway Project Deed or Annexure A	6
1.2	Definitions	6
1.3	Interpretation	16
1.4	Contra proferentem	19
1.5	Business Day	19
1.6	Certification	19
1.7	Ambiguous Terms	19
1.8	Order of precedence	20
1.9	Capacity of WestLink and change of Partners	20
1.10	Severability	20
2.	Conditions precedent to Satisfaction Date	21
2.1	Conditions precedent to obligations of the parties	21
2.2	Notification, waiver and satisfaction	22
2.3	Target Satisfaction Date	23
2.4	Annexure D to the Stage 3 Agreement	23
2.5	Dates to adjust for delay to Satisfaction Date	23
2.6	Contractor's Side Deed	24
3.	Relationship of Transport and each Company	24
3.1	Fundamental obligations	24
3.2	Transport as an Authority	24
3.3	No partnership, joint venture or other fiduciary relationship	24
3.4	Transport action	25
3.5	Other Authorities	25
3.6	Indemnities	26
4.	The existing M7 Motorway	27
5.	Undertaking the Integration Project	27
5.1	Consent	27
5.2	Project risks	27
5.3	Design, construction and completion	28
5.4	Completion of the Integration Project	29
5.5	Opening the Retained Works	29
5.6	Tollway declaration	30
5.7	Integration Project Debt consents and Refinancing	30
6.	Amendments to the M7 Project Documents	31
6.1	Amended M7 Motorway Project Deed in full force	31
6.2	Amendments to the M7 Motorway Project Deed	31
6.3	Amended Gantry Land Agreement to Lease	32
6.4	Amended Motorway Stratum Agreement to Lease	33
6.5	Further amendments to Schedule 5, Schedule 6 and/or Schedule 7	35
6.6	Activation of certain amendments to Schedules 6 and 7	35
6.7	Amendments to other Integration Project Documents	36
7.	Rates, Taxes and GST	37
7.1	Rates and Taxes	37
7.2	GST	37
8.	Confidentiality and publicity	39
8.1	General restriction	39
8.2	Exceptions	40
8.3	Obligations Preserved	40

8.4	Publicity	40
8.5	Disclosure by Transport	41
8A	Material Adverse Effect.....	42
8A.1	Notice of Potential MAE Trigger.....	42
8A.2	Notice of Possible MAE Event	42
8A.3	Occurrence of Possible MAE Event.....	42
8A.4	Notice of Material Adverse Effect.....	42
8A.5	Occurrence of MAE Event	43
8A.6	Good Faith Negotiations	43
8A.7	Payment as a last resort	44
8A.8	Disputes	44
8A.9	No over compensation	45
8A.10	Implementation of redress	45
9.	Default and termination	45
9.1	Events of Default.....	45
9.2	Notice of default	46
9.3	Termination by Transport.....	47
9.4	Right to damages.....	48
9.5	Termination for Final Determination	49
9.6	Termination for Uninsurable Force Majeure Event.....	49
9.7	Termination by the Companies	49
9.8	Suspension of termination notice	50
9.9	Termination Amounts and post termination actions.....	50
9.10	Termination of the Amended M7 Motorway Project Deed	51
9.11	Management of incidents and safety	51
10.	Default Step-In	51
10.1	Default Step-In and exercise of [REDACTED] Rights by Transport	51
10.2	Transport Default Step-In Costs	56
10.3	Step-In Costs Reserve Account.....	59
10.4	Additional Works	61
10.5	Rights and obligations not affected.....	62
10.6	Reinstatement of the M7 Motorway	62
10.7	Latent defects in M7 Structures	64
10.8	Rights and warranties	65
10.9	Management of incidents and safety during step-in	66
12.	Dispute resolution	70
13.	Representations and warranties.....	71
13.1	Representations and warranties by Companies in their own capacity	71
13.2	Representations and warranties by WestLink in its capacity as agent.....	72
13.3	Representations and warranties by Transport.....	73
14.	Assignment.....	74
14.1	Entitlement to assign.....	74
14.2	Change of Control prior to Integration Completion	74
14.3	Definitions	75

15.	Expenses and stamp duties	77
15.1	Expenses	77
15.2	Stamp duties	77
16.	Governing law and jurisdiction	77
16.1	Governing law	77
16.2	Jurisdiction	77
17.	Notices	77
18.	Miscellaneous	79
18.1	Entire agreement	79
18.2	Further acts	79
18.3	Indemnities	79
18.4	Waiver	79
18.5	Consents	80
18.6	Cost of performing obligations	80
18.7	Interest	80
18.8	Moratorium legislation	80
18.9	Replacement body interpretation	80
18.10	No agency	80
18.11	Amendments	81
18.12	Counterparts	81
18.13	Non reliance	81
18.14	English language	81
18.15	Survival of certain provisions; no merger	81
18.16	Approvals not to affect Companies' obligations	82
18.17	Ring Fencing	82
18.18	Vienna Convention	85
18.19	Exclusion of proportionate liability scheme	85
18.20	Companies not to apply proportionate liability scheme	85
18.21	Subcontracts	86
	Schedule 1 – [Not used]	87
	Schedule 2 – [Not used]	88
	Schedule 3 - Commercially Sensitive Information	89
	Schedule 4 – Amendments to the M7 Motorway Project Deed from the Satisfaction Date	91
	Schedule 5 – Amendments to the Amended M7 Motorway Project Deed from the Date of Integration Completion	100
	Schedule 6 – Amendments to the Gantry Land Agreement to Lease	101
	Schedule 7 – Amendments to the Motorway Stratum Agreement to Lease	102
	Schedule 8 – Cost Payment Schedule	103
	Schedule 9 – Dispute Resolution Procedure	108

List of Exhibits

- Exhibit A – Scope of Works and Technical Criteria
- Exhibit B – Planning Minister’s Approval
- Exhibit C – Overall D&C Program
- Exhibit D – Site Access Schedule
- Exhibit E – Insurance Policies
- Exhibit F – Certified AIP Plan
- Exhibit G – Not used
- Exhibit H – Indigenous Participation Plan
- Exhibit I – Information Document
- Exhibit J – Third Party Agreements
- Exhibit K – Deed of Appointment of Environmental Representative
- Exhibit L - EDC Ramps Site

Integration Project Deed

Date Made at Sydney on 21 February 2023.

Parties

Transport for NSW ABN 18 804 239 602 of 231 Elizabeth Street, Sydney, New South Wales 2000 (**Transport**)

Westlink Motorway Limited ACN 096 512 300 of 101 Wallgrove Road, Eastern Creek, New South Wales 2766 (**WestLink**) in its own capacity and as nominee and agent for the Partnership

WSO Co Pty Ltd ACN 102 757 924 of 101 Wallgrove Road, Eastern Creek, New South Wales 2766 (**WSO Co**)

Background

- A. Transport is a statutory body representing the Crown in the right of the State of New South Wales.
- B. On 13 February 2003, the then Roads and Traffic Authority of NSW (**RTA**) and the Companies entered into the M7 Motorway Project Deed under which RTA agreed to:
- (a) grant to WestLink the right to, and impose on WestLink the obligation to, finance, plan, design, construct and commission its Project Works and its Temporary Works (each as defined in the M7 Motorway Project Deed);
 - (b) grant to WSO Co the right to, and impose on WSO Co the obligation to, finance, plan, design, construct and commission its Project Works and its Temporary Works (each as defined in the M7 Motorway Project Deed);
 - (c) grant to WSO Co the right to, and impose on WSO Co the obligation to, operate, maintain and repair the Motorway and to maintain and repair the Third Party Works (each as defined in the M7 Motorway Project Deed); and
 - (d) WestLink agreed to yield up possession of the Motorway (other than the Motorway Plant and Equipment) and the Motorway Stratum, and WSO Co agreed yield up possession of the Motorway Plant and Equipment and the Gantry Land, to RTA in a fully functioning condition (each as defined in the M7 Motorway Project Deed).
- C. On 21 December 2022, the NSW Government accepted a proposal from the Companies under which:
- (a) the Companies will, subject to the express provisions of Annexure A, finance, plan, design, construct and commission the Returned Works, the M7 Widening and the M7-M12 Interchange;
 - (b) the Companies may achieve Completion of Retained Works and, following Completion of Retained Works:
 - (i) the M7 Widening, EDC Ramps and the M7-M12 Interchange will form part of the Motorway;

- (ii) WSO Co will then operate, maintain and repair the M7 Widening, EDC Ramps and the parts of the M7-M12 Interchange not comprising Returned Works as parts of the Motorway, and maintain and repair the Third Party Works;
 - (c) on the Satisfaction Date:
 - (i) the Motorway Stratum Agreement to Lease will be amended to provide for the grant of the Motorway Stratum Lease No.2 and Motorway Stratum Lease (2048); and
 - (ii) the Gantry Land Agreement to Lease will be amended to provide for the grant of the Gantry Land Lease No.2 and the Gantry Land Lease (2048);
 - (d) the Companies may achieve Integration Completion, and following Integration Completion:
 - (i) Transport will grant the Motorway Stratum Lease No.2 to WSO Co in accordance with the Amended Motorway Stratum Agreement to Lease; and
 - (ii) Transport will grant the Gantry Land Lease No.2 to WSO Co in accordance with the Amended Gantry Land Agreement to Lease.
- D. The parties to this deed have agreed that, to give effect to the Integration Project:
- (a) certain provisions of the M7 Motorway Project Deed, the Gantry Land Agreement to Lease and the Motorway Stratum Agreement to Lease will be amended as set out in this deed; and
 - (b) the other Integration Project Documents will be entered into or granted.
- E. WestLink enters into this deed in its own capacity (for the purposes of clause 13.1) and as nominee and agent for the Partnership.

Operative provisions

1. Definitions and interpretation

1.1 Meanings given in the Amended M7 Motorway Project Deed or Annexure A

Unless otherwise defined in this deed, capitalised terms used in this deed have the meaning given to those terms in:

- (a) Annexure A; or
- (b) if not defined in Annexure A, the Amended M7 Motorway Project Deed.

1.2 Definitions

In this deed:

Acceptable LC means a letter of credit from an Authorised Bank and which is in a form and on terms reasonably acceptable to Transport.

Additional Works has the meaning given to that term in clause 10.4.

Alternative Design Solutions has the meaning given to that term in clause 10.7(a)(ii).

Amended Gantry Land Agreement to Lease means the Gantry Land Agreement to Lease as amended pursuant to clause 6.3 of this deed.

Amended M7 Motorway Project Deed means the M7 Motorway Project Deed as amended by this deed (or otherwise) at any time, and from time to time, on or after the date of this deed however prior to the Date of Integration Completion.

Amended Motorway Stratum Agreement to Lease means the Motorway Stratum Agreement to Lease as amended pursuant to clause 6.4 of this deed.

Annexure A means Annexure A to this deed.

Anticipated Transport Completion Date means the date specified in a Transport Completion Notice.

Authorised Bank means an authorised deposit taking institution within the meaning of the *Banking Act 1959* (Cth) and which has a rating of [REDACTED] by S&P GLOBAL RATINGS AUSTRALIA PTY LTD (ACN 007 324 852) (or its successors and assigns) unless otherwise agreed between the parties, [REDACTED]

Available Funds means for a Quarter:

- (a) when used in clause 11.5, such funds which would be permitted to be distributed in accordance with the Finance Documents (as defined under the M7 Security Trust Deed) for that Quarter; or
- (b) when used everywhere else in this deed:
 - (i) such funds which would be permitted to be distributed in accordance with the Finance Documents (as defined under the M7 Security Trust Deed) for that Quarter, less
 - (ii) [REDACTED]

Commercially Sensitive Information means:

- (a) any information relating to any financing arrangements under any Equity Document;
- (b) any information relating to a Company's or the Borrower's cost structure or profit margins;
- (c) any information relating to a Company's or the Borrower's Intellectual Property Rights; or
- (d) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to a Company or the Borrower or a Company's or the Borrower's shareholders, financiers or subcontractors,

which, in respect of the information contained in the Integration Project Documents, is the information described in Schedule 3.

Company means each of WestLink and WSO Co (or either of them, if the context so requires) and "Companies" means each of them severally for their respective obligations under the Integration Project Documents.

Company Group means the Companies, the State Works Contractor, the Borrower, the Partners and any wholly owned subsidiary of any of them, and **Company Group Member** means any of them.

Company Reinstatement Plan has the meaning given in clause 10.6(c).

Conditions Precedent means the conditions precedent set out in clause 2.1 of this deed.

Cost Payment Schedule means Schedule 8.

Day 1 Clauses means:

- (a) clauses 1, 2, 3, 5.7, 8, 12, 13, 14, 15, 16, 17, 18 (other than clause 18.3 except as it applies to a breach of another Day 1 Clause); and
- (b) clause 2.1, 4.1, 4.2, 4.4, 5.2, 6, 7.8, 9.5, 10, 17, 18.3, 18.4, 18.6 and 22 of Annexure A,

and any other clauses, Schedules or Exhibits required to have commenced upon execution of this deed to give effect to those clauses.

Default Step-In Costs has the meaning given in clause 10.

Default Step-In Date means the date specified in a Default Step-In Notice.

Default Step-In Notice means a notice given by Transport pursuant to clause 9.3(b)(ii) and 10.1(b).

Default Step-In Rights means the step-in rights set out in clause 10.1(a)(i).

Deferred Interest Rate means [REDACTED] per annum.

Early Termination Amount (M7M12):

(a) is the total of:

- (i) [REDACTED]; and
- (ii) an amount sufficient to [REDACTED]

(b) does not include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EDC Ramps means those parts of the Returned Works which are within the EDC Retained Works Site as at the Date of Returned Works Completion in respect of the EDC Works.

EDC Ramps Site means the area marked as "EDC Retained Works" on the plan which is contained in Exhibit L to the Integration Project Deed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EDC Works has the meaning given in Annexure A.

Event of Default means any event specified in clause 9.1.

Existing M7 Operations means all of the obligations of the Companies under the Amended M7 Motorway Project Deed.

Final Determination for the purposes of this deed has the meaning given to it in Annexure A.

Financial Year means a period of 12 months ending on 30 June.

Further Amendment Date means the date on which Transport notifies the Companies that it has [REDACTED]

Gantry Land has the meaning contained in the Amended M7 Motorway Project Deed.

Gantry Land No.2 has the meaning contained in the Amended Gantry Land Agreement to Lease.

Gantry Land Agreement to Lease means the deed entitled "Gantry Land Deed of Agreement to Lease" between Transport and WSO Co dated 13 February 2003, as amended and restated prior to the date of this deed.

Gantry Land Lease means the lease of the Gantry Land granted by Transport to WSO Co pursuant to the Gantry Land Agreement to Lease.

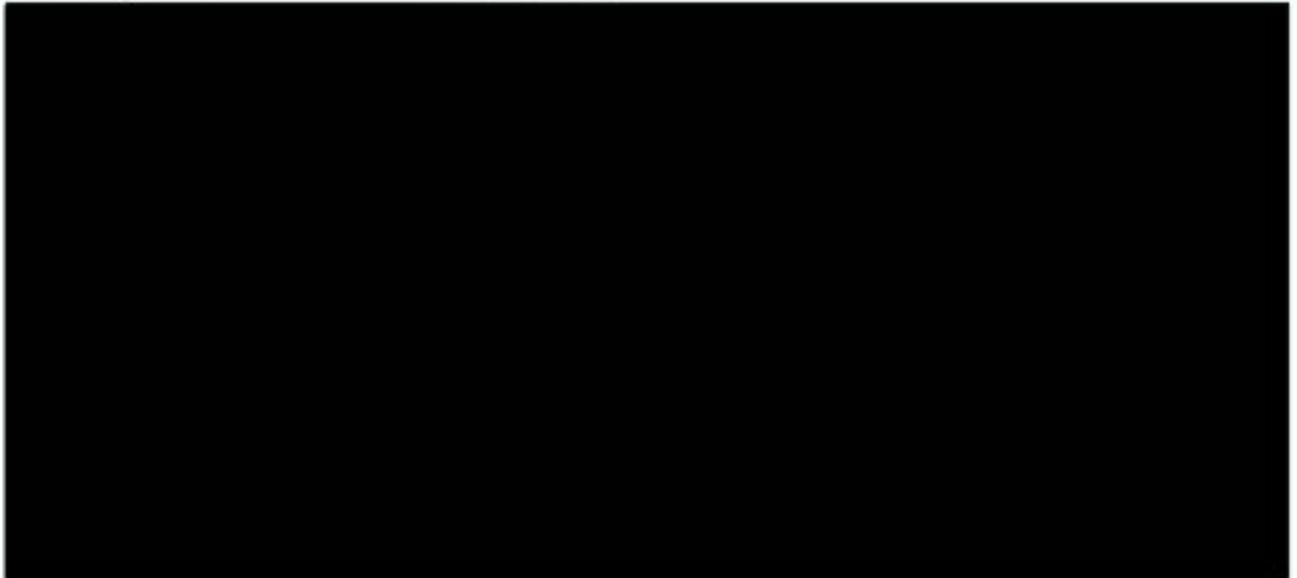
Gantry Land Lease (2048) means the lease of the Gantry Land (to commence in 2048) and to be granted by Transport to WSO Co under the Amended Gantry Land Agreement to Lease.

Gantry Land Lease No.2 means the lease of the Gantry Land No.2 in connection with the M7 Widening and the M7-M12 Interchange and to be granted by Transport to WSO Co under the Amended Gantry Land Agreement to Lease.

Government Entity means a Public Service agency (as defined in the Government Sector Employment Act 2013 (NSW)), a State owned corporation or another entity that is a statutory body representing the Crown.

Integration Base Case Financial Model means the financial model and assumptions prepared by or for the Companies and submitted to Transport on or before the Satisfaction Date.

Integration Debt Finance Documents means:



Integration Equity Commitment Deed means the document entitled "M7 Widening – Equity Commitment Deed" dated on or about the date of this deed between, amongst others, WSO Co and each Integration Equity Investor.

Integration Equity Documents means:



Integration Equity Investors means:



Integration Equity Return

Integration FDD means the document entitled "M7 Widening – Funding Default Deed" between each Original Investor and each Sponsor Entity (each as defined therein) dated on or about the date of this deed.

Integration Financiers means each person providing financial accommodation to the Borrower from time to time under the Integration Debt Finance Documents.

Integration Project means the following activities, to be delivered by the Companies in an integrated fashion:

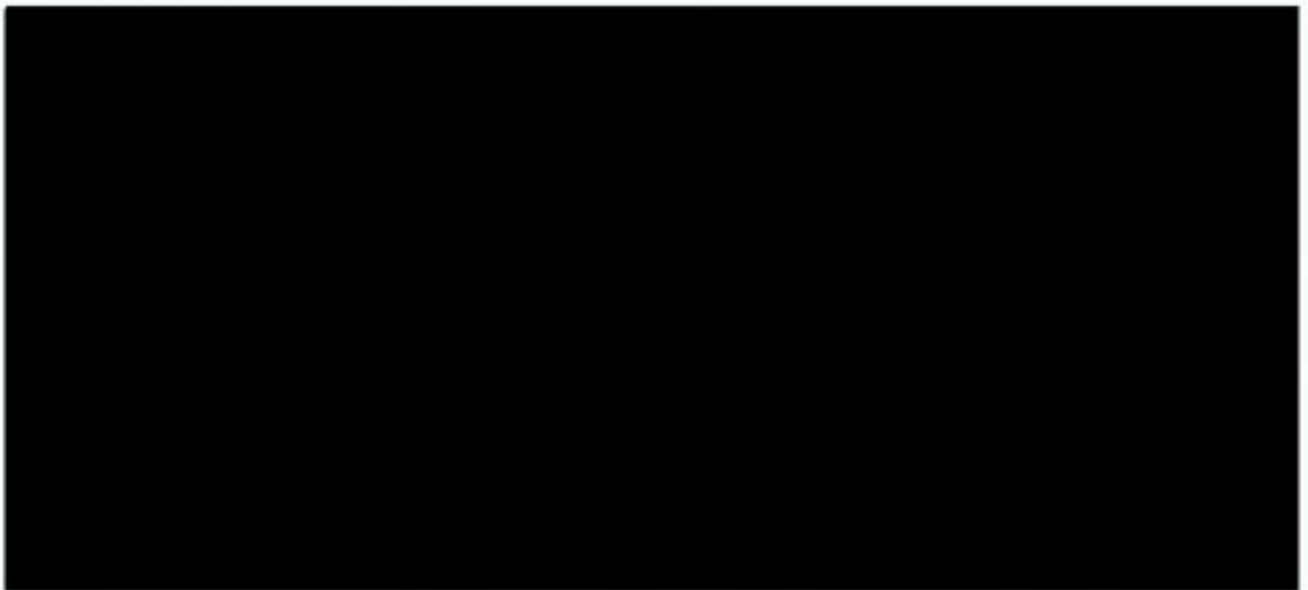
- (a) funding, financing, designing and delivering the widening of the M7 Widening; and
- (b) funding, financing, completing the design of and delivering the M7-M12 Interchange and the EDC.

Integration Project Documents means:

- (a) this deed;
- (b) the State Works Deed;
- (c) the State Works Security;
- (d) the D&C Deed;
- (e) on and from the date of its execution and delivery to the Companies pursuant to clause 2B of the Contractor's Side Deed, the D&C Guarantee;
- (f) the Principal Contractor Deed;
- (g) the Contractor's Side Deed;
- (h) the Independent Certifier Deed;
- (i) the Sub Deed of Appointment of Independent Certifier;
- (j) the Deed of Appointment of Environmental Representative;

- (k) the M12 Central Interface Protocol;
- (l) the NorthConnex Amending Deed;
- (m) the Project Management Deed;
- (n) the Integration Debt Finance Documents;
- (o) the Integration Equity Documents;
- (p) the document entitled "Parent Company Guarantee – Integration Project Documents" between Transport and NorthWestern Roads Group Pty Ltd; and
- (q) the document entitled "Westlink M7 – RMS Consent Deed" given by the Security Trustee on or about the date of this deed.

Integration Project Debt means:



Listing Rules means the 'Listing Rules' of the Australian Stock Exchange as amended or replaced from time to time, except to the extent of any express written waiver.

M7+M7M12 Model Outputs Schedule means the schedule identified as such in the Integration Base Case Financial Model.

M7 Motorway Project Deed means the document titled "Western Sydney Orbital Project Deed" entered into by the RTA and the Companies on 13 February 2003, as amended prior to the date of this deed.

M7 Structure means a structure:

- (a) on, above or adjacent to, or under the surface of the M7 Widening Site; and
- (b) which was constructed or modified by the Companies.

Material Adverse Effect means an adverse effect that is a on the ability of:

Mitigate means, in respect of any event:

- (a) in respect of the Companies and State Works Contractor, taking all reasonable steps in accordance with Good Industry Practice 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 Project Activities (including by changing the sequencing or timing of, or the construction methodologies used by the Companies or the State Works Contractor in carrying out, the Project Activities), but without an obligation to accelerate; and
- (b) in respect of Transport, 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.

Motorway Stratum No.2 has the meaning contained in the Amended Motorway Stratum Agreement to Lease.

Motorway Stratum Agreement to Lease means the deed entitled "Motorway Stratum Deed of Agreement to Lease between Transport and WestLink dated 13 February 2003, as amended and restated prior to the date of this deed.

Motorway Stratum has the meaning contained in the Amended M7 Motorway Project Deed.

Motorway Stratum Lease No.2 means the lease of the Motorway Stratum No.2 required for the M7 Widening and the M7-M12 Interchange and to be granted by Transport to WSO Co under the Amended Motorway Stratum Agreement to Lease.

Motorway Stratum Lease means the lease of the Motorway Stratum to be granted by Transport to WestLink under the Motorway Stratum Agreement to Lease.

Motorway Stratum Sub-Lease means the sublease of the Motorway Stratum (other than the Gantry Land) to be granted by WestLink to WSO Co under the Offer to Sub-Lease.

Net Available Funds means, on any date, the Available Funds in the 12 month period immediately preceding that date, as certified in writing by the Companies, indexed by increases in the CPI between the end of the 12 month period and the Anticipated Transport Completion Date.

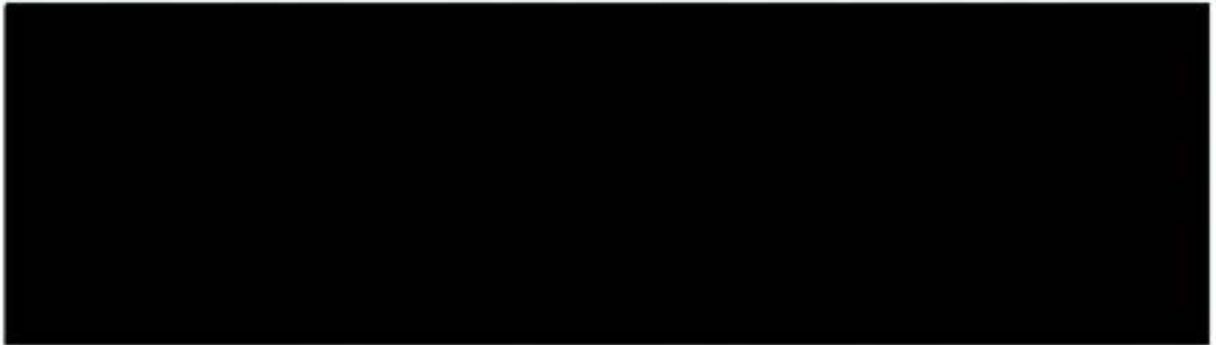
NorthConnex Amending Deed means the document entitled "Amending Deed: Motorway Site Lease (NorthConnex)" between Transport and NorthConnex Company Pty Ltd dated on or about the date of this deed.

Offer to Sub-Lease means the document of that name between WestLink and WSO Co dated 13 February 2003.

Project Document has the meaning given in the Amended M7 Motorway Project Deed.

Project Management Deed means the document entitled "M7M12 Integration Project Management Deed" between WSO Co Pty Limited, the State Works Contractor, Westlink Motorway Limited and Transport dated on or about the date of this deed.

Quarterly Instalment means, in respect of any Quarter after Integration Completion has occurred:



Reinstatement Criteria has the meaning given in clause 10.6(b).

Relevant Area has the meaning given to that term in clause 2.1.

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. Where the Event of Default is an Insolvency Event, Transport acknowledges and agrees that if the Security Trustee appoints a controller to the relevant entity in accordance with the terms of the RMS Consent Deed, such event will be deemed "remedied" for the purposes of this deed.

Repeated Event of Default has the meaning given to that term in clause 10.1(j).

Required Level means in circumstances where:

- (a) Transport is exercising its Default Step-in Rights and Integration Completion has not yet occurred, an amount of money equal to the Quarterly Instalments to be paid to Transport (as set out in the Cost Payment Schedule) for the 12 month period following the Anticipated Transport Completion Date; and
- (b) Transport has exercised Default Step-in Rights and Integration Completion has occurred, an amount of money equal to the Quarterly Instalments to be paid to Transport (as set out in the Cost Payment Schedule) for the 12 month period following the relevant SCR Date;

Satisfaction Date means the date upon which the Conditions Precedent have been satisfied or waived in accordance with clause 2.2.

SCR means, at any time after the Default Step-in Date, the ratio of Net Available Funds to the Required Level.

SCR Date has the meaning given in clause 10.3(c).

Shortfall has the meaning given in clause 10.2(d)(ii).

Stage 3 Agreement means the document entitled "Stage 3 Agreement Unsolicited Proposal for M7-M12 Integration and Delivery" between the Companies and Transport dated 25 October 2022.

State Works Contractor General Security Deed means the State Works Contractor General Security Deed document entitled "M7 Financing – General Security Deed (SWC)" dated on or

about the date of this deed between the State Works Contractor and [REDACTED] as Facility Agent.

State Works Security has the meaning given in the State Works Deed.

Step-In Costs Cap means [REDACTED]

Step-In Costs Reserve Account has the meaning given in clause 10.3(a).

Step-In Items has the meaning given in clause 10.1(e)(iii).

Step-Out Date has the meaning given in clause 10.1(i)(v).

Step-Out Notice has the meaning given in clause 10.1(h).

Sub Deed of Appointment of Independent Certifier means the deed entitled "Sub Deed of Appointment of Independent Certifier" entered into between the Company Group, the Contractor and the Sub IC on or about the date of this deed.

Sub IC means Aurecon Australasia Pty Ltd (ACN 005 139 873) or such other person(s) as may be engaged by the Company Group and the Contractor in accordance with the Sub Deed of Appointment of Independent Certifier.

Sublease has the meaning given in the Motorway Stratum Lease.

Substitution Instrument has the meaning given in clause 1.9.

Target Satisfaction Date means [REDACTED] after the date of this deed.

Transport Completion Notice means a notice given by Transport pursuant to clause 10.3(b).

Transport Project Documents means those Integration Project Documents to which Transport is expressed to be a party.

Transport Reinstatement Plan has the meaning given in clause 10.6(c)(ii).

Trustee means [REDACTED]
[REDACTED]
[REDACTED]

Uninsurable FM Termination Amount (M7M12):
[REDACTED]

Uninsurable Force Majeure Event means, at any time:

- (a) a Force Majeure event referred to in paragraphs (b), (c) or (d) of the definition of "Force Majeure"; or
- (b) a Force Majeure event which:
 - (i) causes physical loss or damage to the Project Works, the Temporary Works or the Motorway; or
 - (ii) prevents the Motorway being open to the public for the safe, continuous and efficient passage of vehicles,

in respect of which no Company nor the State Works Contractor is insured and which is Uninsurable.

Unpaid Quarterly Instalment means any Quarterly Instalment (or part thereof) which should (but for the operation of clause 10.2(d)) have been paid by the Companies on a previous Quarterly Payment Date, but which has not yet been paid.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed; and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **includes** in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) without limiting the Companies' rights under clause 9.5 and clause 17 of Annexure A, a reference to a document (including this deed and any other deed, agreement,

instrument, guideline, code of practice or code and standard but not including Transport policies referred to in the Scope of Works and Technical Criteria, the Integration Base Case Financial Model or the M7 Motorway Project Deed or the Amended M7 Motorway Project Deed, references to the latter two of which are to be interpreted in accordance with their respective defined terms) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to:
 - (i) this deed or any other Integration Project Document includes all schedules, exhibits, attachments and annexures to it, including the Scope of Works and Technical Criteria; and
 - (ii) the Scope of Works and Technical Criteria includes all Appendices to the Scope of Works and Technical Criteria;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for the purposes of clause 12.7 of Annexure A:
 - (i) any extension of time stated in days; or
 - (ii) any reference to "day",

will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Subsidiary D&C Program submitted under clause 12.3(c) of Annexure A as working days;
- (m) for all purposes other than as set out in clause 1.3(l), "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) the Environmental Representative will perform the functions of the Environmental Representative or the ER under the Planning Approval and this deed, the State

Works Deed, the D&C Deed and the Deed of Appointment of Environmental Representative;

(s) any reference to:

- (i) the Project Works (including the Third Party Works);
- (ii) the Temporary Works;
- (iii) the EDC;
- (iv) the M7-M12 Interchange;
- (v) the M7 Widening;
- (vi) the Project Plans;
- (vii) the Scope of Works and Technical Criteria;
- (viii) the Design Documentation; or
- (ix) any other document or thing,

or any part of any of them:

- (x) being fit for its purpose or for its intended purpose; or
- (xi) as having an intended use,

(or any similar reference) will be read as referring to

from:

(xii) this deed:

- A. including the Scope of Works and Technical Criteria;
- B. including the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; and

(xiii) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change), any document provided by Transport to a Company specifically in connection with the Change (excluding any Information Documents);

(t) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and

(u) any obligation of a Company under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by that Company to Transport's Representative under clause 5.5 of Annexure A in respect of which Transport's Representative has not given a notice under paragraph 2(a)(ii) of Schedule 3 to Annexure A.

1.4 Contra proferentem

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

1.5 Business Day

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

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

1.6 Certification

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

1.7 Ambiguous Terms

- (a) If Transport's Representative considers, or if a Company notifies Transport's Representative in writing that it or the State Works Contractor considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any exhibits), Transport's Representative must, subject to clause 1.8, direct the interpretation of this deed which each Company and the State Works Contractor must follow.
- (b) Transport's Representative, in giving a direction in accordance with clause 1.7(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 Transport's Representative gives in accordance with clause 1.7(a):
 - (i) must be in accordance with the order of precedence in clause 1.8;
 - (ii) will not relieve:
 - A. either Company from or alter its liabilities or obligations under this deed or otherwise according to Law; and
 - B. the State Works Contractor from or alter its liabilities or obligations under the State Works Deed or otherwise according to Law;
 - (iii) will not entitle either Company or the State Works Contractor to make (nor will it make Transport liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iv) will not limit or otherwise affect Transport's rights against:
 - A. either Company, whether under this deed or otherwise according to Law; and

- B. the State Works Contractor, whether under the State Works Deed or otherwise according to Law; and
- (v) must, in respect of a notice given by a Company under clause 1.7(a), be given within 20 Business Days of receipt of that notice.

1.8 Order of precedence

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

- (a) this deed, excluding Annexure A, the Schedules and Exhibits;
- (b) Annexure A, excluding the Schedules to Annexure A;
- (c) the Environmental Documents; and
- (d) the Schedules to this deed, the Schedules to Annexure A and the remaining Exhibits.

1.9 Capacity of WestLink and change of Partners

WestLink enters into this deed as agent and nominee for the Partners from time to time. The rights and obligations of WestLink under this deed at any time are the rights and obligations of the Partners at that time. Subject to clause 15.1, each party to this deed agrees that any substitution certificate or transfer document executed pursuant to the Westlink Motorway Partnership Deed (**Substitution Instrument**) operates, with effect from the date the substitution takes effect pursuant to the Substitution Instrument, to join as a party to this deed each entity which signs the Substitution Instrument as an incoming partner.

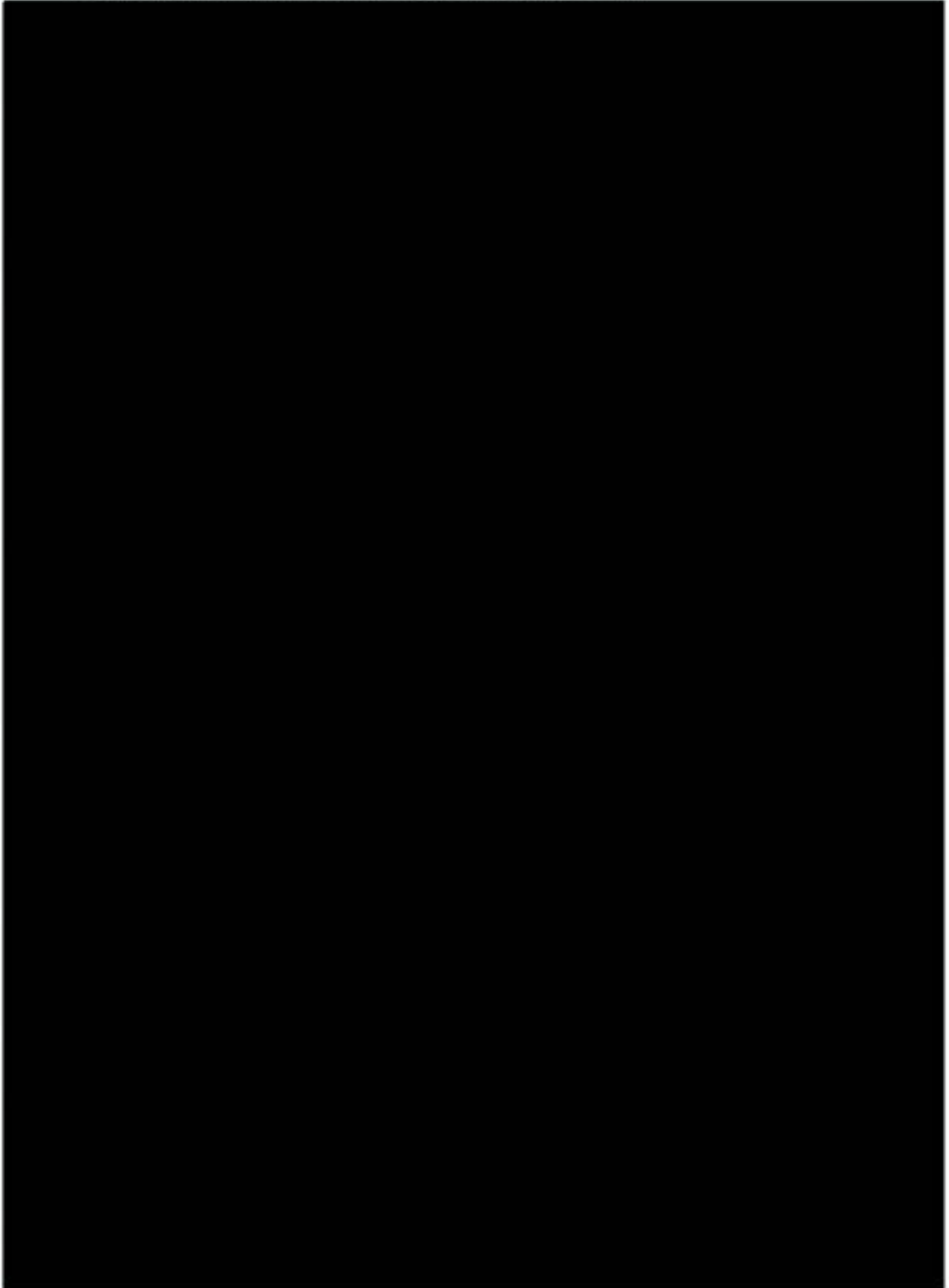
1.10 Severability

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 1.10(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.

2. Conditions precedent to Satisfaction Date**2.1 Conditions precedent to obligations of the parties**

The rights and obligations of the parties under this deed, other than this clause 2 are subject to the satisfaction or waiver of the following conditions precedent:





2.2 Notification, waiver and satisfaction

- (a) Transport must use all reasonable endeavours to satisfy the Conditions Precedent referred to in clauses 2.1(c), 2.1(e)(ii) and 2.1(h) by the Target Satisfaction Date.
- (b) The Companies must use all reasonable endeavours to satisfy the Conditions Precedent referred to in clauses 2.1(a)(i), 2.1(a)(ii), 2.1(b), 2.1(d), 2.1(e)(i), 2.1(f), 2.1(g) and 2.1(i) by the Target Satisfaction Date.
- (c) The parties may waive the Conditions Precedent as follows:
 - (i) Transport may waive in writing any of the Conditions Precedent referred to in clauses 2.1(d) and 2.1(g);
 - (ii) the Companies may waive in writing any of the Conditions Precedent referred to in clauses 2.1(h); and
 - (iii) Transport and the Companies may together waive the Conditions Precedent referred to in in clauses 2.1(a)(i), 2.1(a)(ii), 2.1(b), 2.1(c), 2.1(e), and 2.1(i).
- (d) The Companies must give Transport's Representative written notice when the Companies have reasonably formed the view that a Condition Precedent (other than a Condition Precedent referred to in clauses 2.1(a), 2.1(c), 2.1(e)(ii) and 2.1(h)) has been satisfied or unconditionally waived, and Transport's Representative must give written notice to the Companies of whether or not it agrees with the Companies' notice.
- (e) Transport must give the Companies written notice when Transport has reasonably formed the view that a Condition Precedent referred to in clauses 2.1(a), 2.1(c), 2.1(e)(ii) and 2.1(h) has been satisfied or unconditionally waived, and the Companies must give written notice to Transport of whether or not they agree with Transport's notice.
- (f) Transport's Representative will notify the Companies promptly of the date on which Transport's Representative is satisfied that all Conditions Precedent have been satisfied or unconditionally waived.

2.3 Target Satisfaction Date

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.2(c)) by 11:59pm on the Target Satisfaction Date, then any party may terminate this deed by prior notice in writing to each other party.
- (b) The period of the notice referred to in clause 2.3(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 have not been satisfied (or waived under clause 2.2) within that period.
- (c) If this deed is terminated pursuant to this clause 2.3:
 - (i) each of the other Integration Project Documents to which Transport is a party will be taken to have terminated at the time this deed is terminated;
 - (ii) Transport must return Security Bonds provided by the Companies to Transport within 5 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 Integration Project Documents to which Transport is a party or in respect of the reimbursement of costs or expenses or otherwise in connection with the Integration Project, except for any Claim in relation to breaches of any Day 1 Clause.


2.4 Annexure D to the Stage 3 Agreement

With effect from the Satisfaction Date, despite the terms of the Stage 3 Agreement, Annexure D ("*Consent to carry out Elizabeth Drive Connection*") to the Stage 3 Agreement has no further force or effect.

2.5 Dates to adjust for delay to Satisfaction Date

Without limiting clause 2.3, if:

- (a) [REDACTED] and [REDACTED]
 - (b) [REDACTED]
- then:
- (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED] and
 - (g) [REDACTED]
- [REDACTED]
 - [REDACTED]



2.6 Contractor's Side Deed

The Companies must use their best endeavours to procure that:

- (a) the Contractor complies with its obligations under clause 2B of the Contractor Side Deed; and
- (b) the Contractor Guarantor executes and delivers the D&C Guarantee to the Companies within 15 Business Days of the date of the D&C Deed.

3. Relationship of Transport and each Company

3.1 Fundamental obligations

Each Company must:

- (a) carry out the Company's Activities; and
- (b) integrate, interface and co-ordinate the Company's Activities with the SWC Activities,

in accordance with this deed.

3.2 Transport as an Authority

- (a) Subject to clause 3.2(b), each Company acknowledges and agrees that:
 - (i) nothing in this deed or in any of the Integration Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of Transport to exercise any of its functions and powers pursuant to any legislation; and
 - (ii) without limiting clause 3.2(a)(i), anything which Transport does or fails to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by Transport under this deed and will not entitle the Company to make any Claim against Transport arising out of the subject matter of this deed and the other Integration Project Documents to which Transport is a party.
- (b) Transport and each Company agree that clause 3.2(a) is taken not to limit any liability which Transport would have had to either Company under this deed, or any other Integration Project Document to which Transport is a party as a result of a breach by Transport of a term of this deed or any other Integration Project Document to which Transport is a party but for clause 3.2(a) of this deed.

3.3 No partnership, joint venture or other fiduciary relationship

Neither this deed nor any other Integration Project Document to which Transport and a Company are both expressed to be parties creates a partnership, joint venture or fiduciary relationship between Transport and that Company.

3.4 Transport action

- (a) If:
- (i) either Company:
 - A. fails to perform an obligation under this deed, including the rectification of minor Defects referred to in paragraph 1 of Schedule 12 to Annexure A; and
 - B. has not, within a reasonable time after the date of receipt of a written notice from Transport requiring such failure to be remedied, taken steps to remedy the failure, or having taken such steps, fails to remedy the failure within a reasonable time; or
 - (ii) Transport considers urgent action is reasonably necessary to minimise the risk of harm to:
 - A. the health or safety of persons;
 - B. the Environment;
 - C. any property; or
 - D. the safe operation of any road,

then Transport may take such action as may be necessary to remedy the failure by that Company or minimise the risk of harm (including requiring the EDC, M7-M12 Interchange or M7 Widening or part of any of the EDC, M7-M12 Interchange or M7 Widening to be closed) and Transport may for this purpose enter the Project Site, any Extra Land and any other land upon which the Project Activities are being carried out. In taking action pursuant to clause 3.4(a)(ii), Transport may only remain on the Project Site, any Extra Land and any other land upon which the Project Activities are being carried out for the period of time necessary to minimise that risk of harm. Subject to clause 3.4(b), any Loss suffered or incurred by Transport in taking action permitted by this clause 3.4(a) will be a debt due and payable from that Company to Transport.

- (b) Transport acknowledges and agrees that neither Company will be liable to Transport for any Loss arising as a consequence of Transport's default or negligent act or omission in taking any action referred to in clause 3.4(a)(ii) other than action taken by Transport in connection with an act or omission of a Company. To the extent that a Company has paid Transport an amount in respect of such Loss, Transport must reimburse that amount to that Company within 20 Business Days of receiving a written demand for reimbursement from that Company.

3.5 Other Authorities

Each Company acknowledges and agrees that:

- (a) there are Authorities (other than Transport) with jurisdiction over aspects of the Project Activities, parts of the Project Site and areas affected by the Project Activities;
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities (including the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers);

- (c) notwithstanding any other provision of this deed, Transport is not authorised to:
 - (i) exercise any power, function or duty within the responsibility of any other Authority; or
 - (ii) influence, override or direct any Authority in the proper exercise of its legal duties and functions;
- (d) notwithstanding any requirement that Transport use its best endeavours or reasonable endeavours to do anything or bring about any outcome under any Integration Project Document, Transport is not obliged to:
 - (i) interfere with or influence the exercise by any Authority of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that it regards as not being in the public interest; or
 - (iii) develop policy or legislate by reference only, or predominantly, to the interests of the Integration Project; and
- (e) except as otherwise provided in this deed, it bears the full risk of all occurrences of the kind referred to in this clause 3.5 and will not be entitled to make any Claim against Transport arising out of or in any way in connection with such occurrences.

Without limiting the above, if requested in writing by a Company, Transport will cooperate with, and (at the Companies' cost) use reasonable endeavours to assist, the Companies in obtaining Approvals in respect of Services necessary to carry out the Project Works.

3.6 Indemnities

- (a) Where under the terms of this deed:
 - (i) either Company indemnifies Transport from and against any Liability, Claim or Loss, that Company's liability to indemnify Transport or Transports' Related Parties will be reduced to the extent that any breach of this deed or the other Integration Project Documents to which Transport is a party or other act or omission (including any negligence) of Transport, including an act or omission (including any negligence) of Transports' Related Parties (other than either Company), contributed to the Liability, Claim or Loss;
 - (ii) Transport indemnifies either Company, the State Works Contractor or the Related Parties of either of the Companies or the State Works Contractor from and against any Liability, Claim or Loss, Transport's liability to indemnify that Company, the State Works Contractor or the Related Parties of either of the Companies or the State Works Contractor will be reduced to the extent that any breach by either Company, the State Works Contractor or the Related Parties of either of the Companies or the State Works Contractor of this deed or the other Integration Project Documents to which Transport is a party or other act or omission (including any negligence) of either Company, including an act or omission (including any negligence) of either Company, the State Works Contractor or the Related Parties of either of the Companies or the State Works Contractor, contributed to the Claim or Loss;
 - (iii) a party is obligated to pay an amount in respect of any Loss suffered or incurred by another party, it excludes Loss as a result of the negligence or ██████████ of the payee party, its employees or agents; and

- (iv) a party:
 - A. is obligated to pay an amount in respect of any Loss suffered or incurred by the other party; or
 - B. indemnifies the other party against any Liability, Claim or Loss,

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

- (b) Clauses 3.6(a)(i) and 3.6(a)(iii) will not apply to reduce either Company's liability to indemnify or pay Transport to the extent that Transport is held to be vicariously liable at Law for any acts or omissions of either Company or its employees, agents or contractors.
- (c) Clause 3.6(a)(i) will not apply to reduce either Company's liability to indemnify Transport to the extent that the act or omission of Transport is an act or omission in the exercise of its rights or powers under this deed.

4. The existing M7 Motorway

- (a) Except as otherwise expressly provided in this deed, nothing in this deed limits the Companies' obligations in respect of the Existing M7 Operations.
- (b) Without limiting any other obligations of the Companies, the Companies must, in carrying out the Project Activities, do so in a manner which will not put the Companies in breach of the Amended M7 Motorway Project Deed.

5. Undertaking the Integration Project

5.1 Consent

Transport consents to the Companies undertaking the Integration Project in accordance with the Integration Project Documents.

5.2 Project risks

Subject to the express provisions of this deed and the Project Management Deed, each Company:

- (a) accepts all risks associated with the Integration Project;
- (b) without limiting the generality of clause 5.2(a), accepts all risks associated with:
 - (i) the cost of the Integration Project, including the cost of all Subcontractors and increases in the cost of Materials, Construction Plant, Utility Services and labour required for the performance of the Project Activities;
 - (ii) the performance of Subcontractors;
 - (iii) obtaining access to all areas other than the Project Site;
 - (iv) the occupation and use of the Project Site by each Company and the State Works Contractor;

- (v) the Site Conditions encountered;
 - (vi) all information provided or not provided by Transport about the Project Works, the Temporary Works, the EDC, the M7-M12 Interchange, the M7 Widening and the Project Site;
 - (vii) Contamination of any land upon or within which the Integration Project is undertaken;
 - (viii) traffic conditions on approach roads to the Project Site and any other difficulties with obtaining access to and from the Project 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 Project Activities;
 - (xi) reliance upon or the use of the Concept Design;
 - (xii) providing all Materials, Construction Plant, Utility Services and labour necessary for the Project Activities;
 - (xiii) industrial relations issues;
 - (xiv) foreign exchange movements in any currencies adverse to either Company or the State Works Contractor;
 - (xv) damage to the Project Activities, Project Works, Temporary Works, Project Site, Extra Land, EDC, M7-M12 Interchange, M7 Widening and M7 Motorway;
 - (xvi) the time taken to achieve Returned Works Construction Completion of the EDC Works and Integration Completion;
 - (xvii) third party claims;
 - (xviii) revenue from the Integration Project and traffic volumes, including the risk that revenue from the Integration Project or traffic volumes may be less than expected by the Company Group or its advisers; and
 - (xix) Liability for Taxes other than stamp duty, including the risk that Liability for Taxes other than stamp duty is greater than estimated by the Company Group or its advisers; and
- (c) acknowledges that Transport has not made any representation or given any warranty in respect of the traffic usage of the EDC, the M7-M12 Interchange, the M7 Widening, the M7 Motorway or any other road.

5.3 Design, construction and completion

- (a) The Companies must comply with their obligations under Annexure A and:
 - (i) carry out the Company's Activities, including planning and designing and constructing the Company's Works and the Temporary Works;
 - (ii) commission the Project Works and the Temporary Works; and
 - (iii) integrate, interface and coordinate the Company's Activities with the SWC Activities,

in accordance with Annexure A.

- (b) Transport agrees to comply with its obligations under Annexure A.

5.4 Completion of the Integration Project

The parties acknowledge and agree that, without limiting clause 13 or 14 of Annexure A or clause 40 of the Amended M7 Motorway Project Deed, on and from the Date of Integration Completion, their respective rights and obligations in connection with:

- (a) the Retained Works will be those set out in the Amended M7 Motorway Project Deed; and
- (b) the Returned Works and the Third Party Works will be those set out in Annexure A.

5.5 Opening the Retained Works

- (a) The Retained Works may not be opened for public use prior to the Retained Works Opening Date.
- (b) Each Company must open all traffic lanes of the Retained Works to the public for the safe, efficient and continuous passage of vehicles as soon as practicable after the Retained Works Opening Date and, in respect of the M7 Widening, may then operate (or procure the operation of) the Toll Collection System and levy tolls in relation to the M7 Widening in accordance with the Amended M7 Motorway Project Deed.
- (c) Each Company must:
- (i) give notice to Transport of its good faith estimate of the date on which it anticipates that a traffic lane of the Retained Works could be opened by the Companies for public use at least 20 Business Days (or such lesser period as may be agreed between Transport and the Companies) before that intended date of opening;
 - (ii) otherwise liaise with Transport to ensure the opening of the Retained Works is managed effectively;
 - (iii) effect all insurances (if any) required to be procured by the Companies in relation to the Retained Works under clause 18.6 of Annexure A prior to opening any part of the Retained Works for public use; and
 - (iv) do all things required to be done under this deed (including the Scope of Works and Technical Criteria) prior to opening the Retained Works to public use.
- (d) The parties acknowledge that, notwithstanding any provision of this deed, the opening of the Retained Works prior to the Date of Retained Works Completion will not affect or limit:
- (i) each Company's obligations to achieve Retained Works Completion and rectify Defects in accordance with this deed;
 - (ii) any right or obligation of a Company under any Integration Project Document which is conditional upon, or which arises as a consequence of, Retained Works Completion; or
 - (iii) the calculation or payment of any amount which is conditional upon, or the right to payment of which arises as a consequence of, Retained Works Completion.

5.6 Tollway declaration

Prior to the Date of Integration Completion, Transport must procure that the Minister:

- (a) declares the Relevant Areas to be a tollway under section 52 of the Roads Act 1993 (NSW); and
- (b) directs that the functions of any road authority in respect of the Relevant Areas are the responsibility of Transport.

5.7 Integration Project Debt consents and Refinancing

- (a) The parties acknowledge and agree that on and from the date of this deed until the Date of Integration Completion:
 - (i) the Integration Project Debt:
 - A. does not comprise, include or give rise to an Exotic Swap, an Accreting Instrument, Additional M7 Debt, NorthConnex Debt, Qualifying Additional Debt, a Trigger Event, a Refinancing or a Refinancing Gain;
 - B. does not impact the M7 Debt Profile and is not counted as Upfront Costs or Maximum Upfront Costs Cap; and
 - C. is to be ignored when determining whether a Refinancing is a Consent Refinancing, an Abridged Consent Refinancing or a No Consent Refinancing,

each as defined in each of the Amended M7 Motorway Project Deed and the M7 Motorway Project Deed;
 - (ii) references in the M7 Motorway Project Deed or the Amended M7 Motorway Project Deed to the:
 - A. "Project Debt" do not include the Integration Project Debt; and
 - B. "Debt Financing Documents" do not include any of the Integration Debt Finance Documents.
- (b) Despite clause 5.7(a), the Companies hereby request that Transport consents to the Integration Debt Finance Documents and the Company Group's entry into them and performance of obligations under them, and Transport gives that consent.
- (c) The parties agree that the Integration Base Case Financial Model will, on and from the Satisfaction Date, comprise the "Base Case Financial Model" for the purposes of the Amended M7 Motorway Project Deed.
- (d) The parties confirm that:
 - (i) the State Works Contractor General Security Deed is a collateral security and is therefore a "Financiers' Security" under and as defined in the RMS Consent Deed; and
 - (ii) the "State Works Security" (as defined in the State Works Deed) to be entered into as an Integration Project Document is a collateral security and is therefore an "RMS Security" and as defined in the RMS Consent Deed.

- (e) Despite clause 5.7(a) and Schedule 4, the parties agree that in order to provide Transport with appropriate controls over the Integration Project Debt and the Integration Debt Finance Documents, clause 31.4 (and any associated definitions) of the Amended M7 Motorway Project Deed will apply to the Integration Project Debt and the Integration Debt Finance Documents, however on the basis that (for the purposes of this clause 5.7(e) only):
- (i) a reference to:
 - A. "Debt Financing Documents" is a reference to the Integration Debt Finance Documents;
 - B. "Base Case Financial Model" is a reference to the Integration Base Case Financial Model; and
 - C. "Financiers" is a reference to the Integration Financiers;
 - (ii) any limitations on the amount of amount of Upfront Costs and clauses 31.4(b)(i)(E), 31.4(c)(ii), 31.4(c)(iv)-(vii), 31.4(d)(iii), 31.4(d)(v)-(vii), 31.4(d)(ix), 31.4(e)(ii)-(iii), 31.4(f), 31.4(i)(i)(G)-(H) and 34.1(i)(ii)(C) do not apply;
 - (iii) clauses 31.4(i)(i)(A) and (B) are replaced with an obligation to update the relevant model to contain the actual amount of Integration Project Debt outstanding on the day prior to the Proposed Refinancing Date; and
 - (iv) clause 31.4(i)(i)(D) is replaced with an obligation to update the relevant model to include the forecast amortisation profile of Integration Project Debt balances for the remainder of the Term following the period of the Refinancing.

6. Amendments to the M7 Project Documents

6.1 Amended M7 Motorway Project Deed in full force

The parties agree that each provision of the Amended M7 Motorway Project Deed remains in full force and effect in accordance with its terms, except to the extent expressly varied pursuant to this deed (or otherwise, after the date of this deed).

6.2 Amendments to the M7 Motorway Project Deed

The parties agree that:

- (a) with effect from the Satisfaction Date:
 - (i) the M7 Motorway Project Deed is amended in accordance with Schedule 4;
 - (ii) each party to the M7 Motorway Project Deed is bound by the M7 Motorway Project Deed as amended in accordance with Schedule 4; and
 - (iii) any reference in a Project Document to the M7 Motorway Project Deed is a reference to the M7 Motorway Project Deed as amended in accordance with Schedule 4;
- (b) with effect from the Date of Integration Completion:

- (i) the Amended M7 Motorway Project Deed is amended to read as set out in Schedule 5, or as may be further amended in accordance with clause 6.5;
 - (ii) each party to the Amended M7 Motorway Project Deed is bound by the Amended M7 Motorway Project Deed as amended to read as set out in Schedule 5, or as may be further amended in accordance with clause 6.5; and
 - (iii) any reference in a Project Document to the Amended M7 Motorway Project Deed is a reference to the Amended M7 Motorway Project Deed as amended to read as set out in Schedule 5, or as may be further amended in accordance with clause 6.5;
- (c) this deed amends the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable), and does not terminate, discharge, rescind or replace the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable);
- (d) the amendments to the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable) do not affect the validity or enforceability of the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable);
- (e) nothing in this deed:
- (i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the M7 Motorway Project Deed prior to the date of this deed; or
 - (ii) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the M7 Motorway Project Deed before the date of this deed; and
- (f) this deed is supplemental to the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable) and, except as expressly provided to the contrary, the M7 Motorway Project Deed and/or the Amended M7 Motorway Project Deed (as applicable) are expressly ratified and confirmed.

6.3 Amended Gantry Land Agreement to Lease

Transport and WSO Co agree that:

- (a) with effect from the Satisfaction Date:
- (i) the Gantry Land Agreement to Lease and the Gantry Land Lease are amended in accordance with Part A of Schedule 6;
 - (ii) each party to the Gantry Land Agreement to Lease and the Gantry Land Lease are bound by the Gantry Land Agreement to Lease as amended in accordance with Part A of Schedule 6; and
 - (iii) any reference in a Project Document to the Gantry Land Agreement to Lease and the Gantry Land Lease is a reference to the Gantry Land Agreement to Lease or the Gantry Land Lease (as applicable) as amended in accordance with Part A of Schedule 6;
- (b) with effect from the Further Amendment Date:

- (i) the Gantry Land Lease is amended in accordance with Part B of Schedule 6;
 - (ii) each party to the Gantry Land Lease is bound by the Gantry Land Lease as amended in accordance with Part B of Schedule 6; and
 - (iii) any reference in a Project Document to the Gantry Land Lease is a reference to the Gantry Land Agreement to Lease as amended in accordance with Part B of Schedule 6;
- (c) with effect from the Date of Integration Completion:
- (i) the Gantry Land Agreement to Lease and the Gantry Land Lease are amended in accordance with Part C of Schedule 6;
 - (ii) each party to the Gantry Land Agreement to Lease and the Gantry Land Lease are bound by the Gantry Land Agreement to Lease and the Gantry Land Lease as amended in accordance with Part C of Schedule 6; and
 - (iii) any reference in a Project Document to the Gantry Land Agreement to Lease or the Gantry Land Lease is a reference to the Gantry Land Agreement to Lease and the Gantry Land Lease (as applicable) as amended in accordance with Part C of Schedule 6;
- (d) this deed amends the Gantry Land Agreement to Lease and the Gantry Land Lease, and does not terminate, discharge, rescind or replace the Gantry Land Agreement to Lease or the Gantry Land Lease;
- (e) nothing in this deed:
- (i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Gantry Land Agreement to Lease or the Gantry Land Lease prior to the date of this deed; or
 - (ii) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Gantry Land Agreement to Lease or the Gantry Land Lease prior to the date of this deed; and
- (f) this deed is supplemental to the Gantry Land Agreement to Lease and the Gantry Land Lease and, except as expressly provided to the contrary, the Gantry Land Agreement to Lease and the Gantry Land Lease are expressly ratified and confirmed.

6.4 Amended Motorway Stratum Agreement to Lease

Transport and Westlink agree that:

- (a) with effect from the Satisfaction Date:
- (i) the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease are amended in accordance with Part A of Schedule 7;
 - (ii) each party to the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease is bound by the Motorway Stratum Agreement to Lease and Motorway Stratum Lease as amended in accordance with Part A of Schedule 7; and

- (iii) any reference in a Project Document to the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease is a reference to the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease (as applicable) as amended in accordance with Part A of Schedule 7;
- (b) with effect from the Further Amendment Date:
 - (i) the Motorway Stratum Lease is amended in accordance with Part B of Schedule 7;
 - (ii) each party to the Motorway Stratum Lease is bound by the Motorway Stratum Lease as amended in accordance with Part B of Schedule 7; and
 - (iii) any reference in a Project Document to the Motorway Stratum Lease is a reference to the Motorway Stratum Lease as amended in accordance with Part B of Schedule 7;
- (c) with effect from the Date of Integration Completion:
 - (i) the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease are amended in accordance with Part C of Schedule 7;
 - (ii) each party to the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease are bound by the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease as amended in accordance with Part C of Schedule 7; and
 - (iii) any reference in a Project Document to the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease is a reference to the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease (as applicable) as amended in accordance with Part C of Schedule 7;
- (d) this deed amends the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease, and does not terminate, discharge, rescind or replace the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease;
- (e) nothing in this deed:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease prior to the date of this deed; or
 - (ii) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Motorway Stratum Agreement to Lease or the Motorway Stratum Lease prior to the date of this deed; and
- (f) this deed is supplemental to the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease and, except as expressly provided to the contrary, the Motorway Stratum Agreement to Lease and the Motorway Stratum Lease are expressly ratified and confirmed.

The parties acknowledge and agree that, upon activation of the amendments referred to in paragraph (c), WSO Co will be entitled to enjoy the rights, and must comply with the obligations allocated to WSO Co and contained in clauses 8A and 8B of the Motorway Stratum Agreement for Lease as if WSO Co were a party to that document.

6.5 Further amendments to Schedule 5, Schedule 6 and/or Schedule 7

- (a) If, at any time prior to the Date of Integration Completion, any party (**Proposing Party**) wishes to make amendments to the document which is set out in Schedule 5, Schedule 6 and/or Schedule 7 and which will come into effect on the Date of Integration Completion in accordance with clause 6.2 (**Further Changes**), then:
- (i) the Proposing Party may propose such Further Changes by providing an updated draft of the document which is set out in Schedule 5, Schedule 6 and/or Schedule 7 (as applicable) to the other parties; and
 - (ii) the other parties agree to consider whether any such Further Changes are necessary or appropriate, and if so, further agree to negotiate with the Proposing Party in good faith with a view to agreeing them.
- (b) If any Further Changes are agreed, the Proposing Party will prepare and circulate an amendment deed for negotiation and agreement between the parties (**Further Changes Amendment Deed**) and when the Further Changes Amendment Deed has been agreed, and subject to first obtaining all necessary approvals to do so, the parties will execute counterparts of the Further Changes Amendment Deed and use all reasonable endeavours to satisfy any conditions to its effectiveness.
- (c) Despite any other provision of this deed:
- (i) if Further Changes are agreed and a Further Changes Amendment Deed is executed and becomes effective on or prior to the Date of Integration Completion, then the document which is set out in Schedule 5, Schedule 6 and/or Schedule 7 (as applicable) will not come into effect on the Date of Integration Completion and instead either:
 - A. the document which is annexed to the Further Changes Amendment Deed; or
 - B. the document which is set out in Schedule 5, Schedule 6 and/or Schedule 7 (as applicable) and which is amended by the Further Changes Amendment Deed,(as applicable) will come into effect on the Date of Integration Completion; and/or
 - (ii) if Further Changes are not agreed, or if they are agreed but a Further Changes Amendment Deed has not been executed and/or does not become effective on or prior to the Date of Integration Completion, then the document which is set out in Schedule 5, Schedule 6 and/or Schedule 7 (as applicable) will come into effect on the Date of Integration Completion.

6.6 Activation of certain amendments to Schedules 6 and 7





6.7 Amendments to other Integration Project Documents

- (a) Without limiting clause 10 of Annexure A, neither Company may at any time after the execution of this deed:
- (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 Integration Project Documents to which it is a party, other than:
- (iii) this deed;
 - (iv) the Amended Motorway Stratum Agreement to Lease;
 - (v) the Motorway Stratum Lease;
 - (vi) the Amended Gantry Land Agreement to Lease; or
 - (vii) the Gantry Land Lease,
- (Amendment)** without first obtaining the consent of Transport. Transport irrevocably and unconditionally consents to any assignments by way of security as required by the Integration Debt Finance Documents and the Debt Financing Documents (as defined in the Amended M7 Motorway Project Deed).
- (b) In the event that a Company desires an Amendment it must submit to Transport a written request seeking Transport's consent. The request must set out:
- (i) the Amendment and the relevant reasons therefore;

- (ii) the response or anticipated response of any other party to the Integration Project Documents regarding the Amendment;
 - (iii) the response or anticipated response of any assignee of the Integration Project Documents to the Amendment; and
 - (iv) copies of any documents relevant to the Company's request.
- (c) Transport must advise the Company, within 10 Business Days after receiving the Company's written request under clause 6.7(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 Company regarding Amendment, in which event:
 - A. the Company must provide the additional information sought by Transport within a further period of 10 Business Days; and
 - B. this clause 6.7(c) will reapply as if the additional information were the written request under clause 6.7(b).
- (d) Should Transport fail to respond for any reason within the period required by clause 6.7(c), it will be deemed to have given its consent to the Amendment.

7. Rates, Taxes and GST

7.1 Rates and Taxes

Subject to, and except as provided otherwise by, clause 17 (Changes in Law) of Annexure A and clauses 7.2 and 15.2 of this deed:

- (a) the Companies will be liable for all Taxes levied in respect of the Integration Project, whether in connection with the Motorway, the performance of their obligations under this deed or the execution of this deed, the licence or the lease of the Motorway Stratum, the licence or lease of the Gantry Land and other Integration Project Documents or otherwise (including Taxes which may be payable in respect of the Company's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant); and
- (b) each Company must indemnify Transport in respect of any Loss or Claim brought against, suffered or incurred by Transport arising out of or in connection with Taxes which may be payable pursuant to clause 7.1(a), however excluding any Loss or Claim in respect of which another credit, offset, exemption, indemnity or reimbursement is available to Transport.

7.2 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 7.2(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 7.2(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 7.2(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Arbitrators and Mediators Australia for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 7.2(d) shall not apply to any supply dealt with under clause 7.2(e).
- (e) The parties acknowledge that this clause 7.2(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) the parties acknowledge that the grant of rights and entry into obligations under this deed by each party constitutes consideration for taxable supplies, and that this consideration is provided at the time those various rights are granted and those various obligations are entered into (ie upon execution of this Deed.) The parties agree that the value for their respective taxable supplies is [REDACTED]; and
 - (ii) notwithstanding clause 7.2(b), the additional amount payable on any supply by the Recipient to the Supplier shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate; unless 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 have their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 7.2(e)(ii)A.
- (f) Where clause 7.2(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 7.2(e)(ii), the parties are unable to agree on a means of calculating the additional amounts payable, clause 7.2(b) shall apply without any limitation imposed by this clause 7.2(f), however:
- (i) the Supplier must only issue a tax invoice or an adjustment note to reflect the application of clause 7.2(f) after the parties have reached an agreement under this clause 7.2(f) or have determined that they are unable to reach such an agreement; and
- (ii) the additional amount payable pursuant to clause 7.2(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 7.2(f)(i).
- (g) Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clause 7.2(e), 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 7.2(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 10 Business Days prior to its lodgement of same.

8. Confidentiality and publicity

8.1 General restriction

Subject to clause 8.2, no party will, without the written consent of the other parties, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Company Group Members, the Sponsor Entities, the Contractor, the Integration Financiers (and any agent on their behalf), the Financiers (and any agent on their behalf), the Security Trustee, the Independent Certifier, the Environmental Representative 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 Integration Project Documents; or
- (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 any other party.

8.2 Exceptions

The restrictions imposed by clause 8.1 shall not apply to the disclosure of any information:

- (a) which is now or after the date of this deed comes into the public domain (other than by a 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 (if applicable);
- (c) which is required by a tax or regulatory authority (whether in Australia or overseas);
- (d) as required for any legitimate NSW Government purpose or process;
- (e) pursuant to the Project Summary required to be published in accordance with the NSW Public Private Partnership Policy and Guidelines 2022 (TPG22-21) published by the NSW Government;
- (f) 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, or to any tax or regulatory authority to which the disclosing party is subject;
- (g) which, in the reasonable opinion of the disclosing party, is required to be disclosed to:
 - (i) any actual or prospective investor in or lender to or holder of bonds, notes or similar instruments issued or to be issued in the domestic or international capital markets by (or trustee therefor) a Company or the Borrower (or assignee, novatee or transferee of a lender or holder);
 - (ii) any actual or prospective insurer in respect of the Integration Project;
 - (iii) that party's (or a Company Group Member's) officers, employees, professional advisers, auditors, ratings agencies and consultants; or
 - (iv) any person to whom disclosure is reasonably necessary to enable that person to comply with the Integration Project Documents to which it is a party;
- (h) by Transport that is not Commercially Sensitive Information; or
- (i) which is disclosed to a person authorised by the Commonwealth Minister in pursuance of the obligations of Transport or the Government under the National Land Transport Act 2014 (Cth) or the Notes on Administration for Land Transport Infrastructure Projects.

8.3 Obligations Preserved

Where disclosure is permitted under clause 8.2, other than clauses 8.2(a), 8.2(b), 8.2(c), 8.2(e) and 8.2(f), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this deed.

8.4 Publicity

- (a) Each Company must not, and must ensure that the State Works Contractor does not, issue any information, publication, document or article for publication concerning the Integration Project or the Project Activities to any media (or permit any third party to do so) without the prior written approval of Transports'

Representative (acting reasonably) and only in a manner approved by Transport's Representative (acting reasonably).

- (b) If either Company, the State Works Contractor or any of their Subcontractors receives a direct request from the media for comment in respect of any aspect of the Integration Project or the Project Activities, the Companies must promptly provide details of such request to Transport's Representative.
- (c) Each Company must not announce, promote or hold any event, function or party on the Project Site, the EDC, the M7-M12 Interchange or the M7 Widening (or permit the State Works Contractor or any third party to do so) without the prior written approval of Transport (acting reasonably).

8.5 Disclosure by Transport

- (a) Notwithstanding the other provisions of this clause 8 but subject to clause 8.5(b), the parties acknowledge that:
 - (i) the Integration Project Documents will be made available to the Auditor-General in accordance with the Government Sector Audit Act 1983 (NSW);
 - (ii) information concerning the Integration Project Documents may be tabled in Parliament of the State of New South Wales by or on behalf of Transport and will be published in accordance with applicable government policies and guidelines;
 - (iii) the Integration Project Documents and information concerning the Integration Project Documents will be published on Transport's contracts register in accordance with the GIPA Act (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed in the contracts register under the GIPA Act); and
 - (iv) Transport may, where required by Law, make the Integration Project Documents or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) by entering into this deed, Transport has consulted with the Companies in relation to the disclosure of all information concerning the Integration Project Documents that is not Commercially Sensitive Information;
 - (ii) Transport will notify the Companies of any proposed disclosure of any information that Transport considers (acting reasonably) may be Commercially Sensitive Information by Transport under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (iii) following notification by Transport in accordance with clause 8.5(b)(ii), Transport will take reasonable steps to consult with the Companies before disclosing any information referred to in clause 8.5(b)(ii);
 - (iv) if, following:
 - A. notification by Transport in accordance with clause 8.5(b)(ii); or
 - B. consultation between Transport and the Companies in accordance with clause 8.5(b)(iii),

the Companies object to disclosure of some or all of the information referred to in clause 8.5(b)(ii) on the basis that it is Commercially Sensitive Information, the Company must provide details of any such objection within 5 Business Days of the date the Companies, the Borrower or the Security Trustee received notification from Transport or the date on which the consultation process concluded (as relevant);

- (v) Transport may take into account any objection received from the Companies pursuant to clause 8.5(b)(iv) in determining whether the information identified by the Companies as Commercially Sensitive Information should be disclosed; and
- (vi) nothing in this clause 8.5 will limit or otherwise affect the discharge of Transport's obligations under the GIPA Act.

8A Material Adverse Effect

8A.1 Notice of Potential MAE Trigger

If, at any time prior to the Date of Integration Completion, an Uninsurable Force Majeure Event occurs, either Company must give Transport notice of the Uninsurable Force Majeure Event within 3 months after the occurrence of the Uninsurable Force Majeure Event the subject of that notice.

8A.2 Notice of Possible MAE Event

- (a) If, at any time prior to the Date of Integration Completion, an Uninsurable Force Majeure Event occurs, which either Company reasonably believes may have a Material Adverse Effect (a **Possible MAE Event**) the relevant Company must give Transport notice of the Possible MAE Event.
- (b) A notice given under clause 8A.2(a) will only be valid if it is given within 6 months after the occurrence of the Possible MAE Event the subject of that notice.

8A.3 Occurrence of Possible MAE Event

- (a) If a notice is given under clause 8A.2(a) then, as soon as possible, but no later than 20 Business Days after Transport has received that notice, the parties must negotiate in good faith and endeavour to agree on:
 - (i) whether or not the notice is valid; and
 - (ii) whether or not a Possible MAE Event has occurred.
- (b) If the parties do not reach agreement on the matters referred to in clause 8A.3(a) within 20 Business Days after commencing the negotiations then any party may refer the matter for dispute resolution under the dispute resolution procedure set out in Schedule 9 to this deed.
- (c) If a dispute the subject of clause 8A.3(b) is not referred to dispute resolution under the dispute resolution procedure set out in Schedule 9 to this deed within 18 months after the end of the 20 Business Day period referred to in clause 8A.3(b), the Companies will be deemed to have accepted that a Possible MAE Event has not occurred.

8A.4 Notice of Material Adverse Effect

- (a) If it has been agreed or determined in accordance with clause 8A.3 that a Possible MAE Event the subject of a notice given under clause 8A.2(a) has occurred and

either Company believes that the Possible MAE Event may have, has had or has started to have a Material Adverse Effect, the relevant Company must:

- (i) give Transport notice of the Material Adverse Effect; and
 - (ii) use all reasonable endeavours to Mitigate the adverse consequences of the Possible MAE Event.
- (b) A notice given under clause 8A.4(a) will only be valid if it is given within 12 months after the Possible MAE Event the subject of that notice under clause 8A.2(a) has had or has started to have a Material Adverse Effect.

8A.5 Occurrence of MAE Event

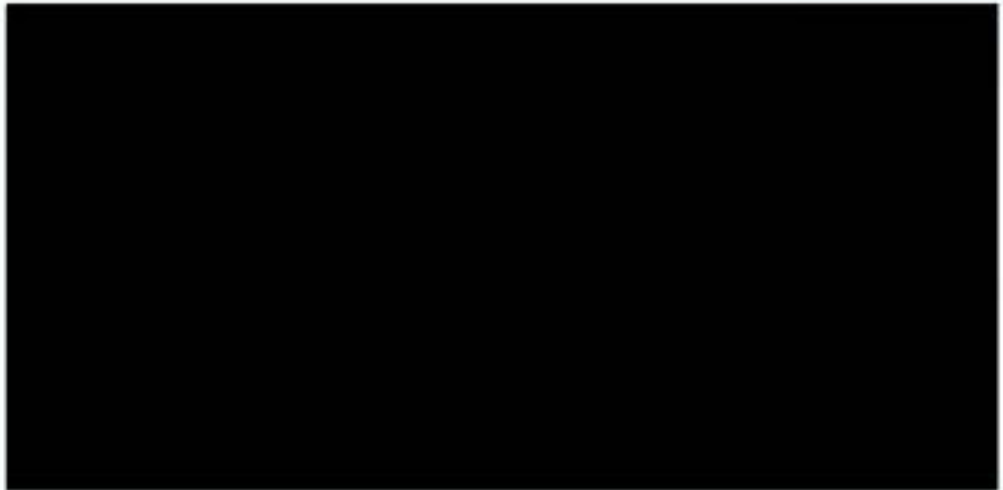
- (a) If a notice is given under clause 8A.4(a) then, as soon as possible, but no later than 20 Business Days after Transport has received that notice, the parties must negotiate in good faith and endeavour to agree on:
- (i) whether or not the notice is valid; and
 - (ii) whether or not the Possible MAE Event the subject of the notice has had or has started to have a Material Adverse Effect.
- (b) If the parties do not reach agreement on the matters referred to in clause 8A.5(a) within 20 Business Days after commencing the negotiations then any party may refer the matter for dispute resolution under the dispute resolution procedure set out in Schedule 9 to this deed.
- (c) If a dispute the subject of clause 8A.5(b) is not referred to dispute resolution under the dispute resolution procedure set out in Schedule 9 to this deed within 18 months after the end of the 20 Business Day period referred to in clause 8A.5(b), the Companies will be deemed to have accepted that the Possible MAE Event the subject of its notice under clause 8A.4(a) has not had or started to have a Material Adverse Effect.

8A.6 Good Faith Negotiations

- (a) As soon as practicable but no later than 20 Business Days after it has been agreed or determined in accordance with clause 8A.5 that the Possible MAE Event the subject of a notice issued under clause 8A.3(a) has had or started to have a Material Adverse Effect, the parties must enter into negotiations and thereafter negotiate in good faith in an endeavour to agree on a method of redress which will enable:

(i)

(ii)



(b) Subject to clause 8A.7 clause 8A.6(c), the parties acknowledge that in any negotiations they will take a flexible approach, including giving consideration to:

- (i) amending the Integration Project Documents;
- (ii) varying the Term;
- (iii) varying the financial or other contributions of the parties;
- (iv) adjusting the Toll Calculation Schedule; and/or
- (v) taking such other action as may be appropriate,

having regard to any payments made by Transport under the Transport Project Documents, whether under an indemnity, in respect of any delay costs, or otherwise.

(c) Transport will not be required to consider or provide any method of redress under clause 8A.6(b) which requires Transport to make an up front payment to the Companies in respect of the anticipated Material Adverse Effect of any Possible MAE Event.

8A.7 Payment as a last resort

The method of redress involving a payment of money by Transport to any Company or any of its Related Parties will be considered as a measure of last resort and will, unless Transport requires otherwise, only apply to the extent that the other methods of redress cannot reasonably be used so as to achieve the relevant objectives referred to in clause 8A.6(a).

8A.8 Disputes

- (a) If the parties do not reach agreement on a method of redress so as to achieve the relevant objectives referred to in clause 8A.6(a) within 90 Business Days after the parties commenced negotiations under clause 8A.6(a) any party may refer the matter to dispute resolution in accordance with the dispute resolution procedure set out in Schedule 9 to this deed.
- (b) In making a determination, the expert or arbitrator must ensure that the method of redress does not involve a method of redress other than those set out in clauses 8A.6(b)(i) to 8A.6(b)(v) (inclusive) without the parties' consent and is otherwise consistent with this clause 8A.

8A.9 No over compensation

Transport will not be obliged under any circumstances to make available or be bound by a method of redress to the extent that:

- (a) it will achieve an outcome in excess of that which is necessary to achieve the relevant objectives referred to in clause 8A.6(a);
- (b) the Possible MAE Event is caused or contributed to by a breach of an Integrated Project Document by a Company, the State Works Contractor or their respective Related Parties or is otherwise within the control of a Company, the State Works Contractor or their respective Related Parties; or
- (c) any other reasonable payment, compensation or redress has been made by Transport arising out of or in connection with the Possible MAE Event or the circumstances relating to the Possible MAE Event.

8A.10 Implementation of redress

- (a) Each Company must ensure that any redress afforded under this clause 8A is efficiently applied and structured (including so as not to create or increase any Liability for Taxes or Liability which need not be incurred or need only be incurred to a limited extent).
- (b) No method of redress will be implemented before the Possible MAE Event has had a Material Adverse Effect, unless Transport agrees otherwise.

9. Default and termination

9.1 Events of Default

Each of the following events is an Event of Default:

- (a) a Company fails to commence, or ensure that the State Works Contractor commences, or to expeditiously and diligently progress, or ensure that the State Works Contractor expeditiously and diligently progresses, the Project Works and State Works as required by clause 12.1 of Annexure A;
- (b) a Company or the State Works Contractor displays an intention to permanently abandon the Integration Project;
- (c) in respect of any insurance the Company Group is required to effect pursuant to clause 18.6 of Annexure A, the Company Group:
 - (i) does not effect insurance that meets the requirements of clause 18.6 of Annexure A; or
 - (ii) fails to maintain the insurance policy as required under clause 18.6 of Annexure A;
- (d) any Company Group Member defaults in a material respect in the due observance and performance of any of their other obligations under this deed or any other Transport Project Document;
- (e) an Event of Insolvency occurs in relation to any Company Group Member, whether or not either Company is then in breach of this deed;
- (f) an Event of Insolvency occurs in relation to the Contractor or the Contractor Guarantor (whether or not either Company is then in breach of this deed) and the

Contractor or Contractor Guarantor is not replaced within 180 days by a party which is reputable, solvent, and has the resources and experience to perform its obligations under the D&C Deed (or in the case of the Contractor Guarantor, the Contractor's obligations under the D&C Deed); and

- (g) a Company breaches in a material respect a representation or warranty given by it under this deed or any other undertaking given by it in a Transport Project Document, or the State Works Contractor breaches in a material respect a representation or warranty given by it under the State Works Deed or any other undertaking given by it in a Transport Project Document.

9.2 Notice of default

- (a) Upon the occurrence of an Event of Default, Transport may, by notice in writing to either Company, require the relevant Company (or either Company, in the case of an Event of Default under clause 9.1(d), clause 9.1(e) or 9.1(f) which is attributable to a person other than a Company) to Remedy the Event of Default within such period specified in the notice as is in the opinion of Transport (acting reasonably) required to Remedy the Event of Default (**Remedy Period**). In any such notice, Transport shall not be required to specify which Company it considers is liable for the particular Event of Default.
- (b) The parties agree that if an Event of Default is:
- (i) a failure to pay rent, the Remedy Period to be specified by Transport is 10 Business Days;
 - (ii) a failure to pay money which is not rent, the Remedy Period to be specified by Transport is 20 Business Days; or
 - (iii) an Event of Insolvency occurs in relation to a Company, the State Works Contractor, a Partner or the Borrower, the Remedy Period to be specified by Transport is 10 Business Days.
- (c) If Transport gives either Company a notice referred to in clause 9.2(a) (a **Remedy Notice**):
- (i) the relevant Company (or either Company, in the case of an Event of Default under clause 9.1(d), clause 9.1(e) or 9.1(f) which is attributable to a person other than a Company) 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 relevant Company (or either Company, in the case of an Event of Default under clause 9.1(d), clause 9.1(e) or 9.1(f) which is attributable to a person other than a Company) must give Transport a program and a plan (a **Remedy Plan**) to Remedy the Event of Default in accordance with the Remedy Notice;
 - B. Transport must consult with that Company in good faith to develop and settle that Remedy Plan; and
 - C. that Company must thereafter comply, and must procure that each Company Group Member complies, with that Remedy Plan.

- (d) If, at any time (even if that Company has previously given Transport a notice under clause 9.2(d)(i)), a Company considers, in good faith, that the time specified in a notice given by Transport under clause 9.2(a) is not reasonable:
- (i) that Company must immediately give Transport written notice of that fact, including details of its reasons and the extension to the Remedy Period which it believes is reasonably required to Remedy the Event of Default; and
 - (ii) subject to clause 9.2(e), Transport must, as soon as practicable after receiving a notice under clause 9.2(d)(i), review the Remedy Period.
- (e) If a Company gives a notice to Transport under clause 9.2(d) and the Company Group or Company Group Members are diligently pursuing the Remedy of the Event of Default, including by implementing the Remedy Plan, the relevant Remedy Period will be extended by such period which is reasonably required to Remedy the Event of Default, as notified by Transport to that Company in writing.
- (f) If a Company considers in good faith that the period specified in the notice given by Transport under clause 9.2(e) is not reasonable, it may refer the matter for resolution in accordance with clause 12.

9.3 Termination by Transport

- (a) If an Event of Default:
- (i) is not Remedied within the relevant Remedy Period (as extended if at all in accordance with clause 9.2(e) or clause 9.2(f)); or
 - (ii) if at any time during that period a Company is not diligently pursuing a program to Remedy of the Event of Default,
- Transport may give to either Company 20 Business Days' written notice of its intention to terminate this deed. During this 20 Business Day period each Company will have a right to Remedy the Event of Default.
- (b) If at the expiration of the 20 Business Day period following the written notice under clause 9.3(a) the Event of Default has not been Remedied, Transport may, but is not obliged to, thereafter (in Transport's absolute discretion) either:
- (i) terminate this deed by written notice to either Company; or
 - (ii) issue a Default Step-In Notice and/or an [REDACTED].
- (c) Upon termination of this deed pursuant to this clause, Transport will not be liable to pay any compensation or other moneys to either Company or the State Works Contractor by reason of that termination (including, where Transport does not exercise the right to require novation of a Subcontract, any amounts payable by a Company or the State Works Contractor to the relevant Subcontractor following termination of that Subcontract).
- (d) Upon termination of this deed under this clause 9.3:
- (i) Transport may require a novation of the D&C Deed under the Contractor's Side Deed;
 - (ii) each Company must at its own cost:
 - A. execute, and must procure that each Company Group Member executes, all documentation required to effect a

transfer to Transport of its interest in the Integration Project;
and

- B. hand over, and must procure that each Company Group Member hands over, books of account and all other records relating to the Integration Project;
- C. hand over the Contract Documentation and Materials;
- D. procure the assignment of that Company's rights under the insurance policies maintained under clause 18.6 of Annexure A to Transport or its nominee;
- E. hand over any other documentation relating to the Integration Project within the custody or control of that Company, the State Works Contractor and their respective Subcontractors; and
- F. rectify all damage to the M7 Motorway and undertake any other reinstatement of M7 Motorway which may be necessary or desirable to operate, maintain the M7 Motorway from time to time and to achieve Final Handover in accordance with the requirements of the Amended M7 Motorway Project Deed;
- G. do all other acts and things reasonably required to ensure that Existing M7 Operations are able to resume as soon as is reasonably practicable; and
- H. not used; and

other than to the extent it forms part of the M7 Motorway (as defined in this deed) or the Gantry Land, Motorway Stratum, Maintenance Site or Motorway (each as defined in the Amended M7 Motorway Project Deed), each Company must peaceably surrender and yield up to Transport, the Project Site, any Extra Land and any other land upon which the Project Activities are being carried out (including any right, title or interest in them).

- (e) The parties acknowledge and agree that Transport may terminate this deed under this clause 9 in circumstances where the Event of Default only relates to or involves one of the Company Group and notwithstanding that the other Company Group Members are not then in default or the subject of an Event of Insolvency

9.4 Right to damages

- (a) Subject to clauses 9.3(c) and 9.4(c), and clause 18.3 of Annexure A, any termination of this deed under Annexure A or this clause 9 will not in any way prejudice any party's rights to claim and recover damages for any breach of contract by another party.
- (b) Subject to clause 18.3 of Annexure A, and clauses 3.6(a)(iii) and 9.4(c), any termination of this deed by Transport under this clause 9 (other than under clause 9.5 or clause 9.6) will entitle Transport to recover all Loss that Transport may suffer or incur arising out of or in any way in connection with the termination of this deed.
- (c) Notwithstanding anything else in this deed, the parties agree that this clause 9.4 and clause 18.3(a) are Transport's sole remedies for the recovery of Loss arising from an Event of Default to which clause 9.3(a) applies, other than:

- (i) Loss arising in connection with the Companies' breach of clause 9.3(d)(ii); or
- (ii) Loss referred to in clause 18.5 of Annexure A,

provided that the Loss referred to in clauses 9.4(c)(i) and 9.4(c)(ii) will not include any Loss arising solely from or solely in connection with the termination of this deed or the State Works Deed.

9.5 Termination for Final Determination

- (a) Notwithstanding any other provision of this deed, if a court makes a Final Determination, Transport may in its absolute discretion terminate this deed at any time after that Final Determination by giving a notice to that effect to each Company, in which case clause 9.9 will apply.
- (b) Transport acknowledges and agrees that neither Company will be in breach of this deed, and the State Works Contractor will not be in breach of the State Works Deed, to the extent that Company or the State Works Contractor (as applicable) is prevented from undertaking the Integration Project in accordance with this deed or the State Works Deed (as applicable) as a consequence of a Final Determination.

9.6 Termination for Uninsurable Force Majeure Event

Notwithstanding any other provision of this deed, if an Uninsurable Force Majeure Event exists, or the consequences of the Uninsurable Force Majeure Event exist, for a continuous period of more than 12 months, then at any time after that 12 month period:

- (a) Transport may in its absolute discretion terminate this deed by giving a notice to that effect to the Companies, after which this deed will terminate and clause 9.9 will apply; or
- (b) the Companies (or either of them) may terminate this deed by giving Transport 30 Business Days' prior written notice, after which, subject to clause 9.8, this deed will terminate and clause 9.9 will apply.

9.7 Termination by the Companies

Subject to clause 9.8, the Companies (or either of them) may terminate this deed by giving Transport 30 Business Days' written notice if:

- (a) a court makes a Final Determination and Transport fails to procure that the effect of the Final Determination is overcome within 18 months of the Companies giving written notification to Transport of the Final Determination;
- (b) the NSW Government enacts legislation (including any rules, regulations or by-laws under that legislation) which prohibits or has the effect of prohibiting a Company from undertaking the Integration Project substantially in accordance with the Integration Project Documents;
- (c) an Authority resumes any part of the Motorway Stratum and as a result a Company is prevented from undertaking the Integration Project substantially in accordance with the Integration Project Documents;
- (d) Transport breaches clause 7.1(a) of Annexure A and such breach:
 - (i) prevents a Company from undertaking the Integration Project substantially in accordance with the Transport Project Documents; and

- (ii) is not Remedied within 12 months after written notice from a Company to Transport specifying the breach;
- (e) a Company or the State Works Contractor are prevented from carrying out the Project Activities for a continuous period of more than 6 months as a result of a direction, order or requirement referred to in clause 7.10(a) of Annexure A; or
- (f) Transport breaches clause 5.1 of the State Works Deed.

If an event referred to in clause 9.7(d)(i) occurs, then in respect of the 12 month period referred to in clause 9.7(d)(ii), Transport must pay the Companies in respect of that period monthly in arrears an amount (including costs, Losses or expenses) sufficient to place the Companies in the net (including after Tax) position it would have been in had the event referred to in clause 9.7(d) not occurred.

9.8 Suspension of termination notice

- (a) If the Companies or any of them issue a notice of termination under clause 9.6 or 9.7, Transport may suspend the Companies' right to terminate, by giving them written notice within 30 Business Days of receipt of the Companies' notice.
- (b) Transport's suspension of the Companies' right to terminate expires:
 - (i) upon notice to that effect from Transport;
 - (ii) 12 months after the date of the Companies' notice under clause 9.6 or 9.7; or
 - (iii) when the relevant event is remedied by Transport or no longer exists, whichever is earlier.
- (c) If Transport's suspension of the Companies' right to terminate expires:
 - (i) under clause 9.8(b)(i) or 9.8(b)(ii), this deed automatically terminates under clause 9.6 or 9.7 on that date; or
 - (ii) under clause 9.8(b)(iii), this deed continues in force.
- (d) Each Company must continue to perform its obligations under this deed while its right to terminate is suspended if:
 - (i) it is lawfully able to do so; and
 - (ii) it is practicable to do so.
- (e) If Transport suspends the Companies' rights to terminate, it must pay the Companies' in respect of the period of suspension monthly in arrears an amount (including costs, Losses or expenses) sufficient to place the Companies' in the net (including after Tax) position it would have been in had the event on the basis of which the Companies' notice under clause 9.6 or 9.7 was issued not occurred.

9.9 Termination Amounts and post termination actions

- (a) Without prejudice to clause 9.4, if this deed is terminated under clause 9.5 or 9.7 Transport must within 30 days of that termination:
 - (i) pay the Companies the Early Termination Amount (M7M12); and

- (ii) release and return any undertaking provided to Transport under clause 6 of Annexure A.
- (b) Without prejudice to clause 9.4, if this deed is terminated under clause 9.6, Transport must within 30 Business Days after the date of termination:
 - (i) pay the Uninsurable FM Termination Amount (M7M12); and
 - (ii) release and return any undertaking and Letters of Credit provided to Transport under clause 6 of Annexure A.
- (c) Each Company agrees that in calculating:
 - (i) the Early Termination Amount (M7M12), [REDACTED]
[REDACTED] and
 - (ii) the Uninsurable FM Termination Amount (M7M12), [REDACTED]
[REDACTED].
- (d) Subject to the Amended M7 Motorway Project Deed remaining on foot, if this deed is terminated under clause 9.5 or 9.7, then clause 9.3(d) will apply (except that the cost of performance of any obligations of the Companies under clause 9.3(d) will be borne by Transport).

9.10 Termination of the Amended M7 Motorway Project Deed

This deed will automatically terminate upon termination of the Amended M7 Motorway Project Deed and clauses 9.3(c) and 9.3(d) will apply to such termination of this deed.

9.11 Management of incidents and safety

Notwithstanding any other provision of this clause 9, if a Company fails to promptly remedy an Event of Default (or the consequences of its negligence or wilful misconduct) and Transport's Representative believes that urgent action must be taken to minimise the risk to the health and safety of persons, the Environment, the Integration Project or any property arising as a consequence of that failure, Transport may immediately exercise and take such steps as it determines necessary to minimise the risk or, if the risk materialises, the effects of the risk.

10. Default Step-In

10.1 Default Step-In and exercise of [REDACTED] by Transport

- (a) If Transport issues a Default Step-In Notice pursuant to clause 9.3(b)(ii) and 10.1(b) or an [REDACTED] Transport is entitled to (but is not obliged to) in its absolute discretion to either:
 - (i) assume total possession, management and control of the Integration Project, the Project Works (including the State Works), the Temporary Works and the performance of the Project Activities (**Default Step-In Rights**); or
 - (ii) [REDACTED]
[REDACTED]

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

and take such additional steps as it determines are reasonably necessary or desirable to continue the performance of the Project Activities, including any steps to minimise the risk to the health and safety of persons, the Environment, the Integration Project, any property or the safe and secure performance of the Project Activities, in connection with the Remedy of the Event of Default. In so doing, Transport must undertake such work in accordance with the Scope of Work and Technical Criteria and, where a verification, determination or certification of the Independent Certifier would have been required by the Companies in respect of the performance of that work, obtain that verification, determination or certification from the Independent Certifier in accordance with the procedures in this deed.

(b) If Transport proposes to exercise its Default Step-In Rights, Transport's Representative must notify the Companies in writing of the date Transport proposes to commence exercising its Default Step-In Rights and promptly consult with the Companies in relation to:

- (i) the action that Transport proposes to take; and
- (ii) the time period which Transport believes may be necessary for Transport to take such action,

(Default Step-In Notice), and between the date on which Transport issues a Default Step in Notice and the Default Step-In Date, the Companies must not, and must procure that the State Works Contractor does not, grant any material consents, approvals or waivers in favour of, or knowingly incur any material Liabilities to, the Contractor without Transport's consent (such consent not to be unreasonably withheld).

(c) If Transport exercises its Default Step-In Rights, Transport must:

- (i) keep the Companies informed of all communications with the Independent Certifier in relation to the performance of the work; and

- (ii) diligently pursue the exercise of the Default Step-In Rights:
 - A. where the failure to do so would have an adverse effect on the use, patronage or capacity of the M7 Motorway or the Companies' ability to levy tolls; and
 - B. so as to enable Existing M7 Operations to resume as soon as is reasonably practicable.
- (d) If Transport exercises its Default Step-In Rights, the Companies' obligation to perform the Project Activities is suspended and Transport's Representative may on or after the Default Step-In Date direct the Companies to do any one or more of the following:
 - (i) immediately suspend performance of all of the Project Activities;
 - (ii) co-operate with Transport or its nominees as and when required by Transport (in its absolute discretion) in relation to the exercise of Transport's Default Step-In Rights; and
 - (iii) take such other steps as Transport determines are reasonably necessary or desirable in order to:
 - A. continue the performance of the Existing M7 Operations;
 - B. minimise the risk of harm to:
 - 1) the health or safety of persons;
 - 2) the Environment;
 - 3) any property; and
 - 4) the safe operation of the M7 Motorway; or
 - C. efficiently exercise its Default Step-In Rights,

in each case to ensure that the Event of Default is Remedied, and Existing M7 Operations are able to resume as soon as is reasonably practicable, and each Company must promptly comply with Transport's reasonable direction.

- (e) If Transport exercises its Default Step-In Rights, each Company must (and must procure that the State Works Contractor and any Subcontractors) provide any assistance to Transport and its nominees required by Transport while Transport is exercising its Default Step-In Rights, including (without limitation) by:
 - (i) giving Transport or its nominees access to the Project Site, the Extra Land and any other land upon which the Project Activities are being carried out;
 - (ii) making available to Transport or its nominees all relevant staff of that Company and all relevant staff of the State Works Contractor and Subcontractors;
 - (iii) to the extent practicable (including having regard to that Company's obligations under the Amended M7 Motorway Project Deed in relation to the Existing M7 Operations, the Companies' rights under its Subcontracts and the Companies' rights under this deed) giving Transport or its nominees possession of all plant, equipment, materials, Temporary Works, tools, spare parts, consumables and repairable items

- being used in the Project Activities and other things on or in the vicinity of the Project Site, the Extra Land and any other land upon which the Project Activities (or those parts in respect of which Transport has exercised its Default Step-In Rights) are being carried out, in each case which are owned by or in the lawful possession of that Company, the State Works Contractor or the Subcontractors and are required to facilitate the carrying out of the Project Activities (**Step-In Items**) or otherwise procuring that such Step-In Items are made available to enable Transport to exercise its Default Step-In Rights;
- (iv) making available to Transport or its nominees all documentation (or copies of documentation) relating to the Integration Project within the custody or control of that Company, the State Works Contractor and the Subcontractors, including all Contract Documentation and Materials and any other documentation relating to the Integration Project;
 - (v) [Not used]
 - (vi) facilitating the smooth transfer of the performance, management and control of the Project Activities (or those parts in respect of which Transport has exercised its Default Step-In Rights) to Transport or its nominees (or both, as the case may be);
 - (vii) taking no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make a transfer of responsibility referred to in clause 10.1(e)(vi) difficult; and
 - (viii) doing all other acts and things reasonably required by Transport to enable Transport or its nominees to be in a position to Remedy, and to Remedy, the Event of Default.
- (f) The parties agree that, despite the terms of any Subcontract or subcontract of the Contractor, Transport will be solely responsible for:
- (i) making all payments required under the D&C Deed or any relevant subcontracts to the D&C Deed in respect of the period from the Default Step-In Date to the Step-Out Date, including:
 - A. any part of the D&C Sum payable by the Companies or the State Works Contractor to the Contractor under the D&C Deed, including the amount stated as payable in the Payment Statement (CW) and / or Payment Statement (SW) or if no Payment Statement (CW) and / or Payment Statement (SW) is issued then the amount stated in the Payment Claim (CW) and / or Payment Claim (SW) (as each term is defined in the D&C Deed); and
 - B. any other amount payable to the Contractor under the D&C Deed, or a subcontractor to the Contractor, in respect of the period from the Default Step-In Date to the Step-Out Date; and
 - (ii) all Liabilities arising out of or in any way in connection with the D&C Deed and the performance of the Integration Project, the Project Works (including the State Works), the Temporary Works and the performance of the Project Activities under it during the period from the Default Step-In Date to the Step-Out Date or arising from the exercise of the Default Step-In Rights, in each case excluding liabilities of the Contractor.

- (g) If Transport achieves Integration Completion in the course of exercising its Default Step-In Rights:
- (i) the achievement of Integration Completion will be deemed to be a Remedy by the Companies of the Event of Default in respect of which Transport exercised such Default Step-In Rights;
 - (ii) the Retained Works will form part of the M7 Motorway as if the Companies had achieved Integration Completion;
 - (iii) all other acts, matters or things which automatically occur upon the achievement of Integration Completion and/or the Date of Integration Completion, occur; and
 - (iv) each Company must comply with its obligations in respect of the Retained Works under this deed and the Amended M7 Motorway Project Deed (including, for the avoidance of doubt, each Company's obligations under clause 15 of Annexure A) as if the Companies had achieved Integration Completion.
- (h) Transport may give the Companies notice of Transport's intention to cease the exercise of its Default Step-In Rights at any time (**Step-Out Notice**).
- (i) If Transport gives the Companies a Step-Out Notice:
- (i) Transport will cease the exercise of its Default Step-In Rights in accordance with the Step-Out Notice;
 - (ii) between the date on which Transport issues a Default Step-Out Notice and the Default Step-Out Date, Transport must not grant any material consents, approvals or waivers in favour of, or knowingly incur any material Liabilities to, the Contractor without the Companies' consent (such consent not to be unreasonably withheld);
 - (iii) Transport will facilitate the smooth transfer of the performance, management and control of the Project Activities (or those parts in respect of which Transport had exercised its Default Step-In Rights) the Company;
 - (iv) Transport will take no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make a transfer of responsibility referred to in clause 10.1(i)(iv) difficult; and
 - (v) each Company must recommence, and must procure that the State Works Contractor recommences, performance of the Project Activities (where such performance has been prevented by Transport exercising its Default Step-In Rights) with effect from the date specified in the Step-Out Notice, which date must be a reasonable date nominated by Transport but in any event will be:
 - A. no later than 20 Business Days after; and
 - B. no earlier than 10 Business Days after,
 the date on which Transport gives the Step Out Notice (**Step-Out Date**).
- (j) Notwithstanding clause 9 and any other provision of this clause 10, if, after a Company or the State Works Contractor recommences performance of the Project Activities under clause 10.1(i)(v), an Event of Default occurs which is of the same type as the Event of Default that has previously entitled Transport to exercise its

Default Step-In Rights occurs (or an Event of Default which is substantially the same as it occurs) (**Repeated Event of Default**), Transport may give the Companies notice that a Repeated Event of Default has occurred and this clause 10 will apply to the Repeated Event of Default, except:

- (i) the period available to the Companies under this deed to Remedy the Repeated Event of Default will not exceed 3 months in aggregate; and
 - (ii) if the Repeated Event of Default has not been Remedied within the period required under clause 9.2 (as limited by clause 10.1(j)(i)), Transport may in its discretion terminate this deed in accordance with clause 9.3 or exercise its Default Step-In Rights in accordance with this clause 10.1.
- (k) Each Company acknowledges and agrees that:
- (i) Transport has no liability for any Loss or Claim which either Company or the State Works Contractor suffers or incurs as a result of the exercise of the Default Step-In Rights (including any amounts payable by a Company or the State Works Contractor to the relevant Subcontractor following termination of that Subcontract, but excluding amounts required to be reimbursed by Transport to a Company in accordance with clause 10.2(h)) except to the extent of Transport's negligence or [REDACTED] in the exercise of its Default Step-In Rights;
 - (ii) [REDACTED];
 - (iii) neither Company nor the State Works Contractor will be entitled to any relief from its obligations except to the extent expressly provided for by this clause 10, nor any compensation from Transport, in respect of the exercise by Transport or its nominees of Default Step-In Rights in accordance with this clause 10; and
 - (iv) neither Company's nor Transport's liabilities or obligations, whether under this deed or otherwise according to Law, in respect of any event entitling Transport to exercise the Default Step-In Rights, will be limited by the terms of this clause 10.1(k), except to the extent expressly provided in this clause 10.
- (l) Each Company irrevocably appoints (and must procure that the State Works Contractor appoints) Transport as its attorney on and from the Default Step-In Date until Transport ceases exercising its Default Step-In Rights, for the sole purpose of executing any document reasonably required for the sole purposes of, or to give effect to, this clause 10.1 and with full power and authority to execute any such document and do any such other thing on behalf of that Company (or in respect of the State Works Contractor, the State Works Contractor) if that Company (or in respect of the State Works Contractor, the State Works Contractor) fails to execute such document or do such other thing within 5 Business Days of being requested in writing to do so by Transport, where the appointment is necessary to allow Transport to exercise its Default Step-In Rights.

10.2 Transport Default Step-In Costs

- (a) All reasonable costs reasonably incurred by Transport in exercising its Default Step-In Rights:
 - (i) including but not limited to the:

- A. contracting and procurement costs incurred by Transport in connection with the negotiation, entry into, and management of contracts for work and/or services;
- B. financing costs incurred by Transport in respect of any loan taken out by Transport;
- C. reimbursement costs incurred by Transport pursuant to clause 10.2(h); and
- D. costs incurred by Transport pursuant to any Subcontract or subcontract of the Contractor (including, without limitation, as described in clause 10.1(f)),

in connection with Remedying the effects of the Event of Default; and

- (ii) excluding any costs incurred by Transport in carrying out Additional Works,

(Default Step-In Costs) up to the Step-In Costs Cap will, with effect on and from the Date of Integration Completion, be a debt due from the Companies to Transport and payable to Transport in instalments in accordance with the Cost Payment Schedule and this clause 10.2.

- (b) The parties agree that Transport must provide the Companies with all documentation upon which Transport relies, and any other information reasonably required by the Companies, to substantiate the costs referred to in clause 10.2(a).
- (c) Subject to clause 10.2(d), 10.2(f) and 10.2(j), on each Quarterly Date after the Date of Integration Completion, the Companies must pay the Quarterly Instalment for that Quarter.
- (d) The Companies are only required to pay a Quarterly Instalment to Transport to the extent that the Companies have Available Funds to make such payment, and, to the extent that on any Quarterly Date the Companies have insufficient Available Funds to pay the Quarterly Instalment due on that Quarterly Date:
 - (i) the Companies must pay that portion of the Quarterly Instalment to the full extent to which they have Available Funds on that date; and
 - (ii) any shortfall between the amount of the Quarterly Instalment and the Available Funds (**Shortfall**) will accrue capitalised interest at the Deferred Interest Rate from (but excluding) the Quarterly Date on which such amount would have been payable if not for this clause 10.2(d) until the date the amount (and any accrued capitalised interest) is paid in accordance with clause 10.2(e),

and any Shortfall will not be payable other than in accordance with clause 10.2(e).
- (e) Where clause 10.2(c) has applied in relation to a Quarter and there remains any Unpaid Quarterly Instalments, the Companies must, on each Quarterly Date until there ceases to be any Unpaid Quarterly Instalments, pay an amount to Transport calculated as the lesser of:
 - (i) Available Funds after the payment of any amount payable under clause 10.2(d); and
 - (ii) an amount equal to the aggregate of:
 - A. any Unpaid Quarterly Instalment; and

- B. accrued interest on those Unpaid Quarterly Instalment calculated in accordance with clause 10.2(d)(ii).
- (f) Subject to clause 10.2(g), Transport acknowledges and agrees that if Transport exercises its Default Step-In Rights and Integration Completion does not occur, the Companies will not have any obligation to repay any Default Step-In Costs to Transport in accordance with this clause 10.
- (g) Notwithstanding any other provision of this clause 10, Transport will be deemed to have achieved Integration Completion if:
- (i) either:
- A. Retained Works Completion has been achieved; or
- B. the Independent Certifier issues a written notice under clause 13.1(e)(ii)A of Annexure A that the only work remaining to be completed to achieve Retained Works Completion is the work identified in clauses 10.2(g)(iii) to 10.2(g)(vi); and
- (ii) either:
- A. Returned Works Construction Completion of the EDC Works and the Returned Works (excluding the EDC Works) has been achieved; or
- B. the Independent Certifier issues a written notice under clause 14.1(g)(ii)A of Annexure A that the only work remaining to be completed to achieve Returned Works Construction Completion of the EDC Works or the Returned Works (excluding the EDC Works) (as the case may be) is the work identified in clauses 10.2(g)(iii) to 10.2(g)(vi),
- where the work referred to in clause 10.2(g)(i)B and/or 10.2(g)(ii)B (as the case may be) is limited to:
- (iii) the SWTC requirements which remain the responsibility of the Companies pursuant Schedule 35 to the D&C Deed (*Contractor obligations under the SWTC*);
- (iv) the updating of the O&M Manuals and/or the development of the Returned Works Operations and Maintenance Plan (as the case may be) in accordance with clause 16 of Annexure A;
- (v) any work Transport has been prevented from performing as consequence of Transport complying with Transport's obligations to the Companies under this clause in connection with the Companies carrying out the Existing M7 Operations; or
- (vi) any other work Transport has been prevented from performing as a result of:
- A. a breach by a Company or the State Works Contractor; or
- B. a failure by a Company or the State Works Contractor to provide Transport with access to the Project Site, the Extra Land or the M7 Motorway.
- (h) Notwithstanding clause 10.1(f)(i), if during the period from the Default Step-In Date to the Step-Out Date the Companies or the State Works Contractor pays:

- (i) any part of the D&C Sum to the Contractor under the D&C Deed, including the amount stated as payable in the Payment Statement (CW) and / or Payment Statement (SW) or if no Payment Statement (CW) and / or Payment Statement (SW) is issued then the amount stated in the Payment Claim (CW) and / or Payment Claim (SW) (as each term is defined in the D&C Deed); or
- (ii) any other amount payable to the Contractor under the D&C Deed, or a subcontractor to the Contractor,

then:

- (iii) Transport must promptly reimburse the Companies for any amounts so paid (including amounts payable by the Contractor to a relevant subcontractor and any change costs payable under the Subcontract or subcontract of the Contractor in connection with Additional Works).
- (i) Each Company agrees that any reimbursement made in accordance with clause 10.2(h) will be included in the calculation of the Default Step-In Costs.
 - (j) The parties agree that:
 - (i) notwithstanding anything to the contrary in this deed, Transport's rights to recover the Default Step-in Costs from the Companies are limited to the rights specified in this clause 10.2 including by being limited to the Step-In Costs Cap;
 - (ii) this clause 10.2 is Transport's sole remedy for the recovery of the Default Step-in Costs; and
 - (iii) despite the provisions of this clause 10.2 and of clause 10.3, the Companies may pay additional amounts comprising the Default Step-in Costs (or all of the Default Step-in Costs) to Transport at any time.

10.3 Step-In Costs Reserve Account

- (a) Within 5 Business Days after the Default Step-In Date, the Companies must establish an account to be styled "Step-In Cost Reserve Account" (**Step-In Costs Reserve Account**).
- (b) If at any time after the Default Step-In Date, Transport reasonably believes (based on advice from the Independent Certifier) that Integration Completion will occur within a period of 12 months or less, Transport may provide written notice to the Companies specifying the date on which Transport reasonably believes the Date of Integration Completion will occur (**Transport Completion Notice**).
- (c) If at any time after the date on which:
 - (i) the Companies receive a Transport Completion Notice; or
 - (ii) Transport achieves Integration Completion pursuant to the exercise of its Default Step-In Rights,

the SCR is [REDACTED], then from that date (an **SCR Date**) and subject to clause 10.3(d), the Companies must, within 30 days of the end of each following Quarter, transfer to the Step-In Costs Reserve Account any Available Funds for that preceding Quarter until the cash balance of the Step-In Costs Reserve Account is equal to the Required Level.

- (d) The Companies' obligation to fund the Step-in Costs Reserve Account to the Required Level under clause 10.3(c) will immediately cease if:
- (i) at any time after the relevant SCR Date, the SCR is [REDACTED]; or
 - (ii) where clause 10.3(c)(i) applies, the Companies and Transport agree (each acting reasonably and on the advice of the Independent Certifier) that the Anticipated Transport Completion Date will not occur within 12 months of the relevant SCR Date.
- (e) Neither Company may withdraw or permit the withdrawal of any amount from the Step-In Costs Reserve Account:
- (i) other than to pay a Quarterly Instalment (or part thereof) due to Transport in accordance with clause 10.2 which would otherwise be unpaid because the Companies have insufficient Available Funds to pay the Quarterly Instalment (or part thereof) on the relevant Quarterly Date; or
 - (ii) unless Transport has issued a Step-Out Notice or has otherwise ceased to exercise its Default Step-In Rights prior to Transport achieving Integration Completion,
- other than to the extent permitted by clause 10.3(f), or clause 10.3(g), or if clause 10.3(d) applies.
- (f) If at any time, the cash balance of the Step-in Costs Reserve Account exceeds the Required Level, the Companies may withdraw an amount of money equal to the difference between the Required Level and the cash balance of the Step-In Costs Reserve Account (prior to that withdrawal).
- (g) The Companies may, at any time, replace all of the cash balance maintained in the Step-In Costs Reserve Account by providing Transport with one or more Acceptable LCs with a face value equivalent to that cash balance.
- (h) If an Authorised Bank which has issued an Acceptable LC ceases to have the credit rating required to remain as an Authorised Bank, the Companies must promptly, but in any event within 7 Business Days of the rating change, replace the relevant letter of credit:
- (i) with cash deposited in the Step-In Costs Reserve Account; or
 - (ii) by providing a new Acceptable LC to Transport with an equivalent face value to the letter of credit to be replaced.
- (i) For the purposes of this deed, the cash balance in the Step-In Costs Reserve Account will be taken to include the face value of any Acceptable LCs provided to Transport in accordance with this clause 10.3.
- (j) Each Company must (without limiting the obligations of the Companies under the Amended M7 Motorway Project Deed):
- (i) keep books of account and all other records relating to the performance of its obligations, the Step-In Costs Reserve Account and the Available Funds and ensure that the books of account and records are available to Transport at all reasonable times for examination, audit, inspection, transcription and copying;

- (ii) if this deed is terminated, allow Transport access to any books of account and records referred to in clause 10.3(j)(i) for a period of seven years; and
- (iii) procure that the State Works Contractor gives Transport certified copies of the audited financial statements for the previous Financial Year of the State Works Contractor by no later than 30 November in each year.

10.4 Additional Works

If, during the exercise of Transport's Default Step-In Rights, Transport proposes to carry out a Change (**Additional Works**):

- (a) Transport may issue a document entitled "Additional Works Proposal" to the Companies which sets out details of the proposed Additional Works;
- (b) within 15 Business Days of receipt of an "Additional Works Proposal" from Transport under clause 10.4(a), the Companies must provide Transport with a written notice containing:
 - (i) the Companies' estimate of the operating and maintenance costs or savings that will be incurred by the Companies as a result of the Transport carrying out the Additional Works, substantiated (to the extent possible) by detailed particulars;
 - (ii) details of the functional integrity of any of the elements of the Project Works and the performance standards required by this deed which will be adversely affected by the proposed Additional Works;
 - (iii) details of the quality standards, warranties and other obligations required under this deed which will be adversely affected by the proposed Additional Works;
 - (iv) details of any adverse effects of the proposed Additional Works on the use, patronage or capacity of the M7 Motorway or the M7 Widening or the Company's ability to levy or collect tolls;
 - (v) details of any adverse effect of the proposed Additional Works on Existing M7 Operations; and
 - (vi) any other information requested by the "Additional Works Proposal" (if applicable);
- (c) within 15 Business Days of receipt of the notice given under clause 10.4(b), Transport must:
 - (i) give a written notice to the Companies that it withdraws the relevant "Additional Works Proposal", in which case Transport will not carry out the Additional Works;
 - (ii) give a written notice to the Companies that it agrees with the matters referred to in the Companies' notice, in which case Transport may carry out the Additional Works and the Companies' obligations under this deed, the Existing M7 Operations and the other matters referred to in clause 10.4(b) will be varied to the extent set out in the notice given under clause 10.4(b); or
 - (iii) give a written notice to the Companies that it disagrees with the matters referred to in the Companies' notice and requires the dispute to be referred for determination under clause 12, in which case Transport may,

where the carrying out of the Additional Works by Transport has been agreed to by the parties, or is permitted, in accordance with clause 10.4(d) (even if the matters referred to in the Companies' notice have not been), carry out the Additional Works before the dispute has been determined under clause 12 and the Existing M7 Operations and the Companies' obligations under this deed and the other matters referred to in clause 10.4(b) will be varied to the extent set out in the notice given under clause 10.4(b) and agreed by Transport or, to the extent that agreement is not reached, as determined in accordance with clause 12;

- (d) unless otherwise agreed by the parties, Transport may not carry out any Additional Works if the Additional Works would:
 - (i) during the period between the date of this deed and the Date of Retained Works Completion cause a greater reduction in capacity or patronage of the M7 Motorway than the reduction in capacity or patronage which the Integration Base Case Financial Model forecasts at the date of this deed will arise as a consequence of carrying out the Project Activities; or
 - (ii) adversely affect:
 - A. the use, patronage or capacity of the M7 Widening;
 - B. the use, patronage or capacity of the M7 Motorway following Retained Works Completion; or
 - C. the Companies' ability to levy or collect tolls; and
- (e) if Additional Works undertaken by Transport in accordance with this clause 10.4 result in the Company incurring additional operating and maintenance costs, Transport must pay the Company those costs (as agreed under clause 10.4(c) or determined in accordance with clause 12). Unless otherwise agreed, Transport must pay the Company the additional operating and maintenance costs:
 - (i) to the extent that any amounts are due and payable by the Company to Transport in accordance with clause 10.2 at that time (**Owed Amounts**), by setting-off amounts due to the Company under this clause 10.4 against the Owed Amounts; or
 - (ii) otherwise within 10 Business Days after completion of the Additional Works.

10.5 Rights and obligations not affected

The parties acknowledge that unless expressly stated otherwise in this deed, during such period Transport is exercising its Default Step-In Rights, the rights and obligations of the parties as set out in this deed remain unaffected.

10.6 Reinstatement of the M7 Motorway

- (a) Where an Event of Default is subsisting, and Transport:
 - (i) has a right under this deed to exercise its Default Step-In Rights, but has not given the Companies a notice under clause 10.1 within 60 Business Days of being entitled to do so under clause 10.1;
 - (ii) exercises its Default Step-In Rights but elects to cease exercising those rights prior to Integration Completion; or

- (iii) has a right under this deed to terminate this deed, but has not yet elected to do so within 60 Business Days of being entitled to do so under clause 10.1,

and either:

- (iv) the Companies are not able to comply with their obligations, as amended by this deed, to keep all traffic lanes of the M7 Motorway open to the public for the safe, efficient and continuous passage of vehicles; or
- (v) Transport and the Companies agree (acting reasonably) that the M7 Motorway should be reinstated to minimise a material adverse effect that the Event of Default will have on the capacity or patronage of the M7 Motorway,

either Transport or the Companies may propose a plan (**Reinstatement Plan**) for the reinstatement of the M7 Motorway.

- (b) A Reinstatement Plan must contain a detailed description of the works necessary to ensure the prompt repair or replacement of the M7 Motorway so that:

- (i) either (as applicable):
 - A. the Companies are able to comply with their obligations under the Amended M7 Motorway Project Deed to keep all traffic lanes of the M7 Motorway open to the public for the safe, efficient and continuous passage of vehicles; or
 - B. the material adverse effect of the Event of Default upon the capacity or patronage of the M7 Motorway is minimised; and
- (ii) to the extent reasonably practicable having regard to the other Reinstatement Criteria only, it preserves flexibility for the parties to continue to carry out the Integration Project (having regard to the nature of the relevant Event of Default),

(the **Reinstatement Criteria**).

- (c) Within 20 Business Days following receipt of a Reinstatement Plan from the Companies (**Company Reinstatement Plan**), Transport may either:

- (i) direct the Companies to carry out the Company Reinstatement Plan; or
- (ii) direct the Companies to carry out an alternate Reinstatement Plan proposed by Transport (**Transport Reinstatement Plan**).

- (d) If Transport proposes a Transport Reinstatement Plan in accordance with clause 10.6(c)(ii), the Companies must, within 20 Business Days of receipt of the Transport Reinstatement Plan, either:

- (i) notify Transport of their acceptance of the Transport Reinstatement Plan; or
- (ii) if the Companies consider in good faith that the Transport Reinstatement Plan does not comply with the Reinstatement Criteria, refer this dispute for determination under clause 12.

- (e) As soon as reasonably practicable following the earlier of:

- (i) a direction by Transport to carry out a Company Reinstatement Plan;

- (ii) notification by the Companies to Transport of their acceptance of the Transport Reinstatement Plan; and
- (iii) determination of a dispute as to whether the Transport Reinstatement Plan complies with the Reinstatement Criteria and, if not, the changes required so that it does meet the Reinstatement Criteria,

each Company must diligently pursue the implementation of the applicable Reinstatement Plan.

- (f) Nothing in this clause 10.6 or in a Company Reinstatement Plan will limit Transport's Default Step-In Rights or the [REDACTED].

10.7 Latent defects in M7 Structures

- (a) If Transport discovers any latent defect in the condition of an M7 Structure in exercising its Default Step-In Rights:
 - (i) Transport will promptly notify the Companies; and
 - (ii) the Companies may (but are not obliged to) propose a Change in relation to alternative design solutions for achieving the functionality, durability and quality requirements of the Scope of Works and Technical Criteria requested by Transport (Alternative Design Solutions) within 20 Business Days after receipt of a notice from Transport under clause 10.7(a)(i).
- (b) If the Companies propose a Change in accordance with clause 10.7(a)(ii) and, in Transport's reasonable opinion, it would have been feasible for the Companies to carry out the Project Works in accordance with the Scope of Works and Technical Criteria (taking into account any additional capital and operating costs to be borne by the Companies as a consequence of the latent defect) then without limiting any other rights Transport has under this clause 10.7, Transport will:
 - (i) consider the Change proposed by the Companies, including the Companies' proposed Alternative Design Solutions;
 - (ii) consider any information and supporting documentation in relation to the Alternative Design Solutions;
 - (iii) cooperate with the Companies in assessing the Alternative Design Solutions (taking into account total capital and operating costs); and
 - (iv) consider the proposed Change in good faith and otherwise pursuant to clause 1.4 of Schedule 10 of Annexure A.
- (c) If the Companies propose a Change in accordance with clause 10.7(a)(ii), then, for the purposes of clause 10.2, any determination of the reasonable costs incurred by Transport in connection with the latent defect in the condition of a structure on, above or adjacent to, or under the surface of, the Project Site or the Extra Land encountered by Transport in exercising its Default Step-In Rights must:
 - (i) include all costs which Transport considers are reasonable for Transport to incur in taking steps to render any structure affected by such latent defect safe and to otherwise minimise the risk of harm to the health or safety of persons, the Environment, any property and the safe operation of the M7 Motorway; and
 - (ii) otherwise be made having regard to Transport's obligations under clause 10.7(b).

- (d) If the Companies:
- (i) do not propose a Change in accordance with clause 10.7(a)(ii); or
 - (ii) propose a Change in accordance with clause 10.7(a)(ii) but the Change is rejected by Transport in accordance with clause 1.4 of Schedule 10 of Annexure A,
- then Transport may (in its absolute discretion) correct the latent defect.
- (e) The reasonable costs of action taken by Transport under clause 10.7(d) will be included in, and limited to and by, the Step-In Costs Cap.

10.8 Rights and warranties

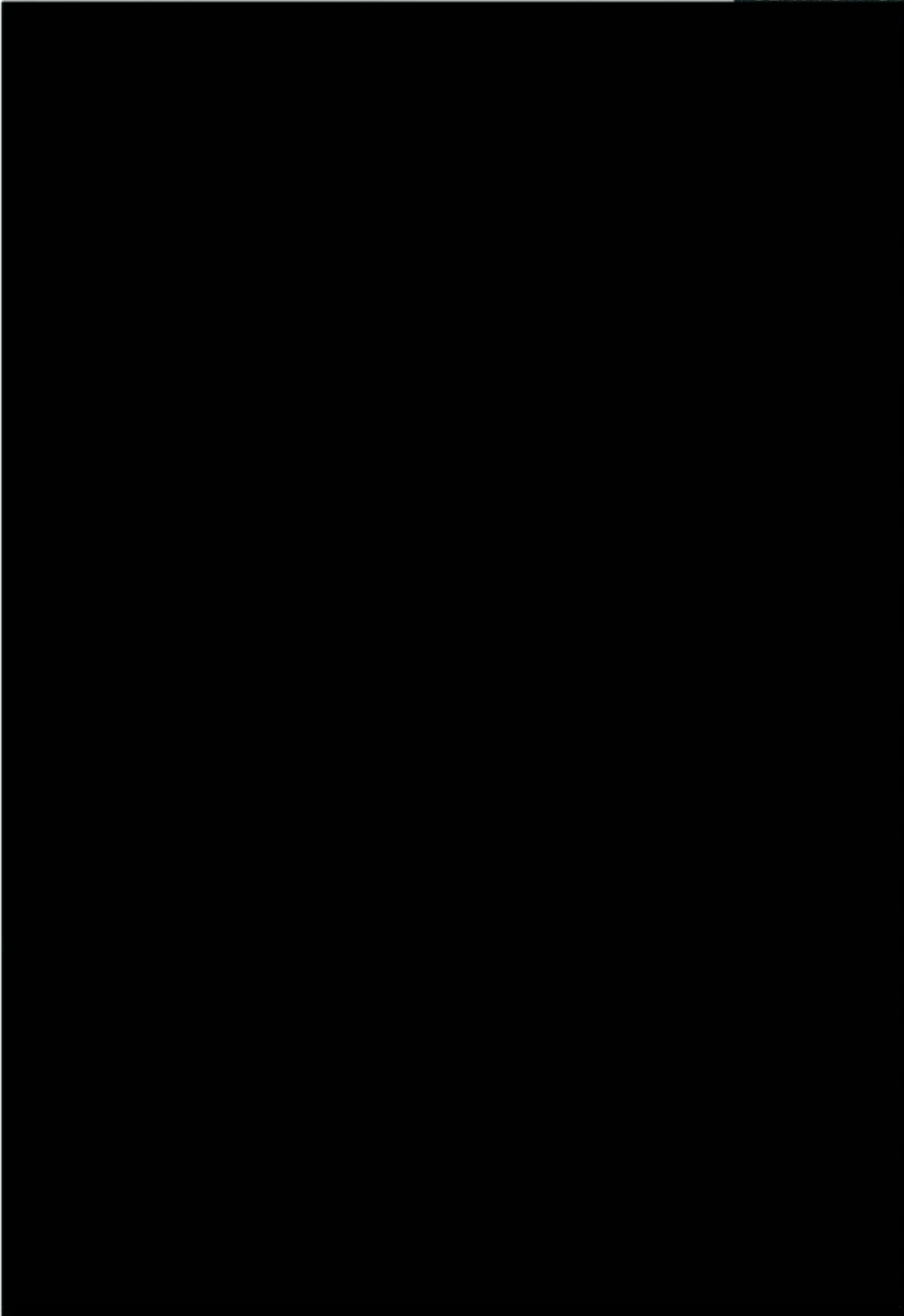
- (a) Where Transport engages a contractor (other than the Contractor) to perform any Project Activities in connection with its Default Step-In Rights, Transport must use reasonable endeavours to obtain:
- (i) rights and warranties in relation to the performance of those works or services that a reasonable and prudent principal would obtain, including:
 - A. warranties on similar terms to those contained in clauses 5.1, 7.17, 9.3, 11.2, 19.2 and 19.3 of Annexure A;
 - B. a defects liability period of 12 months (plus an additional 12 months in respect of any defects rectified by the contractor); and
 - C. indemnities on similar terms to clause 18.2(a) of Annexure A,

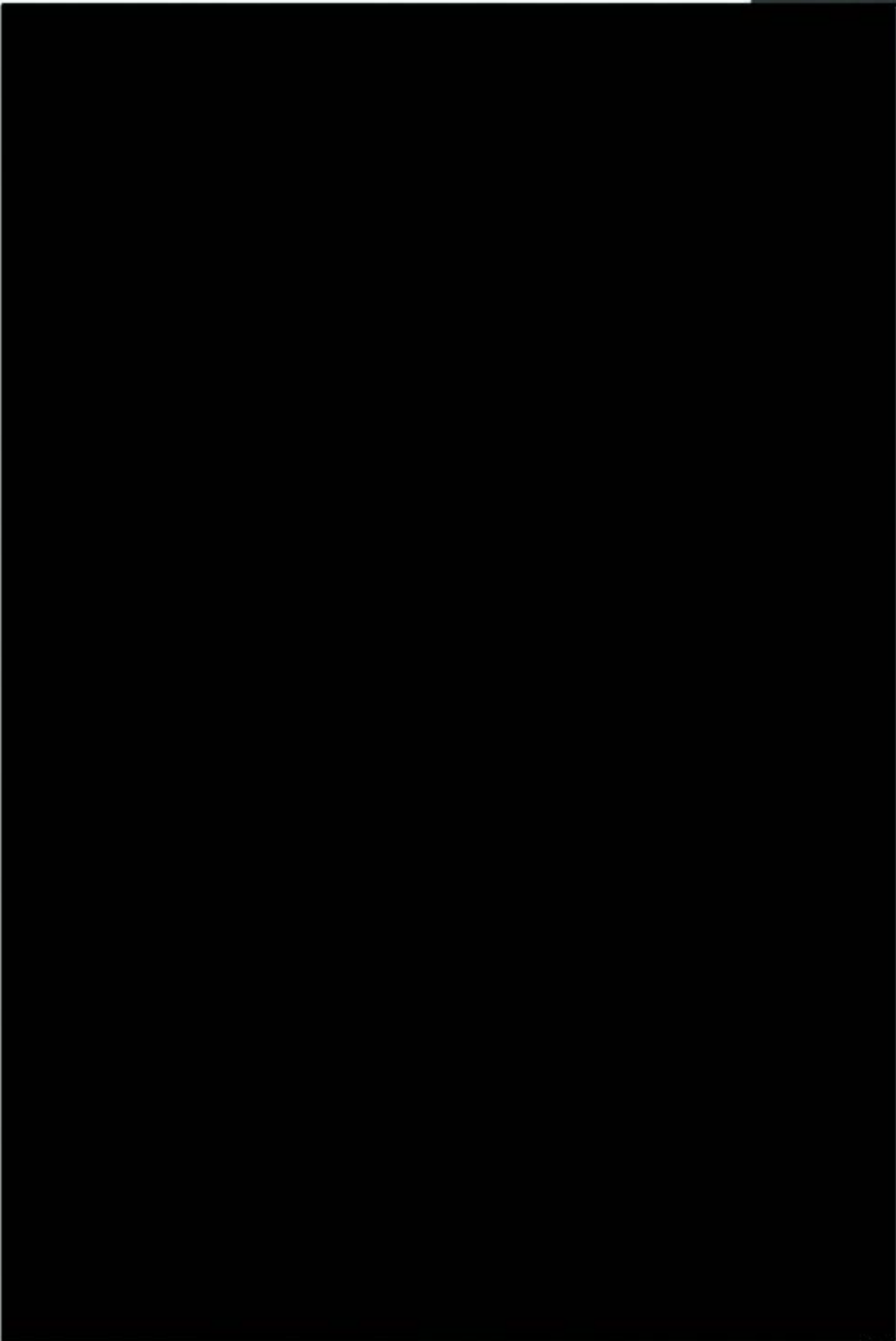
in relation to the works or services to be performed by the contractor; and
 - (ii) a collateral warranty given by the contractor for the benefit of the Companies that the contractor will indemnify the Companies against all Loss suffered by the Companies as a result of any damage to the M7 Motorway arising out of, or in connection with, the works or services performed by the contractor (including any loss of tolling revenue by the Companies as a result of the damage and performance liquidated damages on similar terms to those contained in clause 14.9A of the D&C Deed.
- (b) If the Companies recommence performance of the Project Activities or Retained Works Completion is achieved, Transport must assign to the Companies the benefit of warranties and rights obtained by Transport from a contractor referred to in clause 10.8(a) (other than the collateral warranty referred to in clause 10.8(a)(ii)) in connection with those works.
- (c) Nothing in this clause 10.8 obliges Transport to actually obtain the rights and warranties referred to in this clause 10.8 or to obtain those rights and warranties without a cap or other limitation on the liability of the contractor engaged to perform the relevant works or services.
- (d) Any reasonable costs incurred by Transport in obtaining rights and warranties under clause 10.8(a)(ii) may be included in the Transport Default Step-In Costs under clause 10.2 and will be a debt due and payable by the Companies to Transport in accordance with clause 10.2.

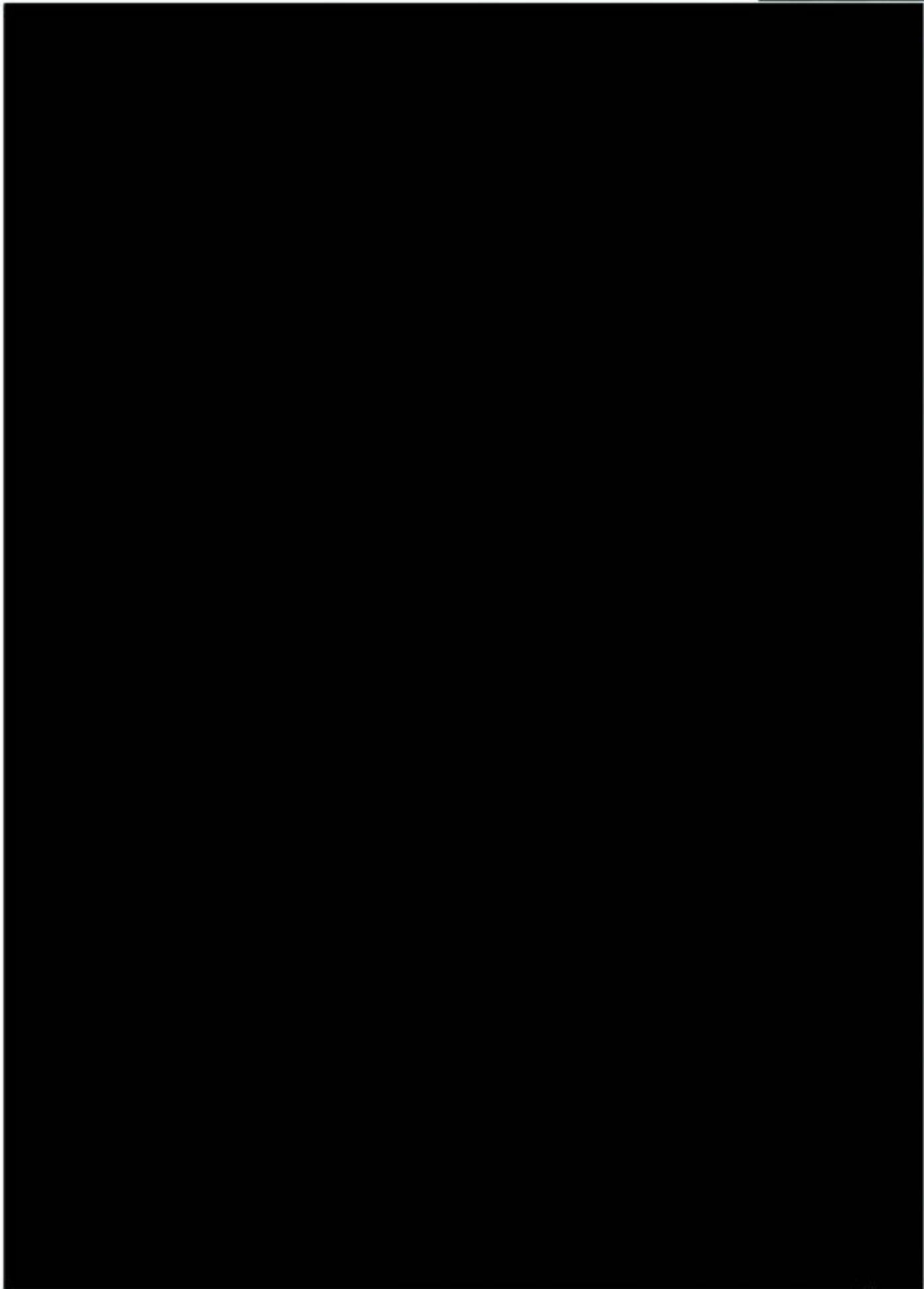
10.9 Management of incidents and safety during step-in

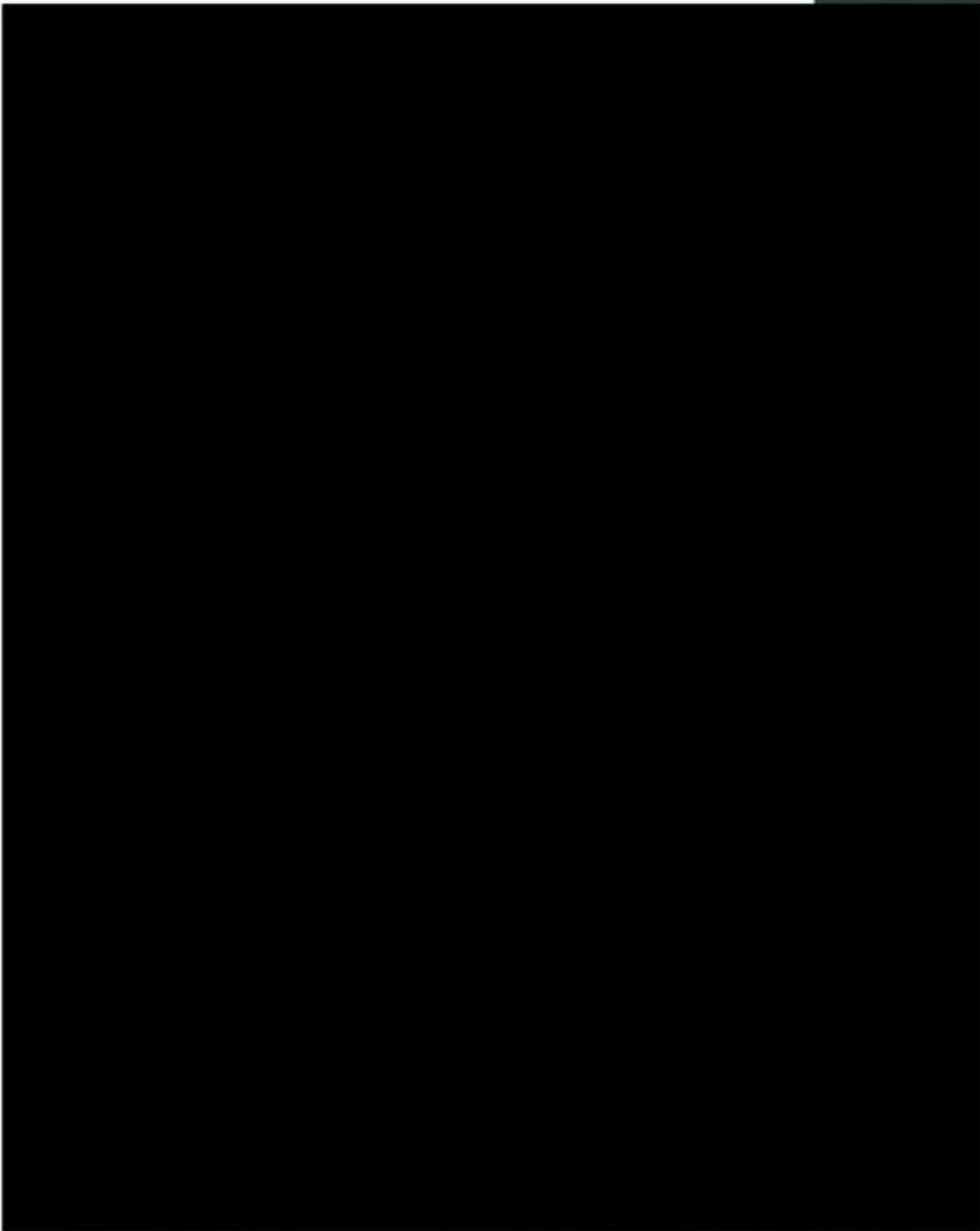
Without limiting any other obligations of the Companies under this deed or the Amended M7 Motorway Project Deed:

- (a) the parties agree to co-operate openly and constructively (having regard to the reasonable protection of their commercial and legal positions) in relation to the investigation and management of, and response to, incidents occurring in connection with the M7 Motorway during any period in which Transport is exercising Default Step-In Rights where such incidents have resulted, or have the potential to result, in serious injury or death to any person; and
- (b) the Companies must immediately inform and keep Transport's Representative informed in writing about any action or measures each Company has taken or proposes to take to respond to, overcome or minimise the effects of such incident, event or circumstance on the safe operation of the M7 Motorway.









12. Dispute resolution

The parties acknowledge and agree:

- (a) all disputes between Transport and a Company relating to or arising out of or in any way in connection with this deed, are to be resolved in accordance with the dispute resolution procedure set out in Schedule 9 to this deed; and

- (b) subject to clause 12(a), nothing in this clause will otherwise limit the operation or effect of clause 26 of the Amended M7 Motorway Project Deed.

13. Representations and warranties

13.1 Representations and warranties by Companies in their own capacity

Each Company, in its own capacity, makes the following continuing representations and warranties for the benefit of Transport:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party (in whatever capacity);
- (b) it has power to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party (in whatever capacity), to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) its obligations under each Integration Project Document to which it is expressed to be a party (in whatever capacity) 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) the Company subsists and is properly constituted;
- (e) except as stated in the Equity Documents, it is not the 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 Integration Project Document to which Transport is expressed to be a party (in whatever capacity);
- (g) except as contemplated by the RMS Consent Deed, its obligations under the Transport Security will rank ahead of, and its obligations under this deed and each Integration Project Document to which it is expressed to be a party (in whatever capacity) (other than the Transport Security) will rank at least equally with, all its other unsecured indebtedness, other than indebtedness preferred by law;
- (h) the execution, delivery and performance of each Integration Project Document to which it is expressed to be a party (in whatever capacity) 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;
- (i) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and

- (j) no litigation (which has not been disclosed to Transport in writing prior to the date of this deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any Integration Project Document to which it is expressed to be a party (in whatever capacity).

13.2 Representations and warranties by WestLink in its capacity as agent

WestLink, in its capacity as nominee and agent of each Partner, makes the following continuing representations and warranties for the benefit of Transport, in relation to that Partner:

- (a) that Partner has in full force and effect all authorisations necessary to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party or to which WestLink is expressed to be a party as its agent (whether or not also having another capacity);
- (b) that Partner has power to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party or to which WestLink is expressed to be a party as its agent (whether or not also having another capacity), to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) its obligations under each Integration Project Document to which it is expressed to be a party or to which WestLink is expressed to be a party as its agent (whether or not also having another capacity) 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) the Partnership subsists pursuant to the Westlink Motorway Partnership Deed;
- (e) no action has been taken or threatened by that Partner to terminate the Partnership;
- (f) WestLink is the sole agent of that Partner and has been duly authorised to negotiate and enter into those Integration Project Documents to which WestLink is expressed to be a party in its capacity as agent of that Partner;
- (g) no action has been taken or threatened by that Partner to remove or replace WestLink as agent of that Partner or to appoint an additional agent of that Partner;
- (h) the Equity Documents (as defined in the Amended M7 Motorway Project Deed) and the Integration Equity Documents (including all Schedules to each document) provided to Transport prior to the date of this deed is a true and complete copy of each document and contains full particulars of the terms of the Partnership and of the rights and entitlements of WestLink and the Partners;
- (i) WestLink has a right to be indemnified by that Partner (in proportion to its partnership interest) in respect of any Loss or Claim brought against, incurred or suffered by it arising out of or in connection with the Integration Project, the Integration Project Documents or the transactions which those documents contemplate will be carried out by WestLink as its agent (whether or not also having another capacity);
- (j) other than WSO IM3 (in relation to the WSO Holding Trust) and Transurban (in relation to the Transurban WSO Trust), that Partner is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;

- (k) that Partner is not in default of its material obligations under any Integration Project Document to which Transport is expressed to be a party;
- (l) except as contemplated by the RMS Consent Deed, that Partner's obligations under the RMS Security will rank ahead of, and its obligations under this deed and each Integration Project Document to which it is expressed to be a party (other than the Transport Security) will rank at least equally with, all its other unsecured indebtedness, other than indebtedness preferred by law;
- (m) the execution, delivery and performance of each Integration Project Document to which that Partner 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;
- (n) that Partner does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (o) no litigation (which has not been disclosed to Transport in writing prior to the date of this deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against that Partner which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any Integration Project Document to which it is expressed to be a party.

13.3 Representations and warranties by Transport

Transport makes the following continuing representations and warranties for the benefit of each Company:

- (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 Integration Project Document to which it is expressed to be a party;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under each Integration Project Document to which it is expressed to be a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of power;
- (d) its obligations under each Integration Project Document to which it is expressed to be a party are valid and binding and are enforceable against it in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) the execution, delivery and performance of each Integration Project Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which Transport is subject.

14. Assignment

14.1 Entitlement to assign

- (a) Notwithstanding anything in the Amended M7 Motorway Project Deed or this deed to the contrary, except as provided in:
- (i) the Integration Debt Finance Documents;
 - (ii) the Debt Financing Documents (as that term is defined in the Amended M7 Motorway Project Deed); and
 - (iii) the RMS Consent Deed,
- neither WestLink (in its own capacity or as agent of the Partners), nor WSO Co, nor any Partner may sell, transfer, assign, mortgage, charge or otherwise dispose of, deal with, or encumber its interest in the Integration Project or in any of the Integration Project Documents prior to the Date of Integration Completion without the prior written consent of Transport.
- (b) Transport may sell, transfer or assign or otherwise dispose of or deal with its interest in the Integration Project Documents to a Government Entity without the prior written consent of a Company provided that the transferee is the then-current holder, or simultaneous transferee, of Transport's interest in the Project Documents.

14.2 Change of Control prior to Integration Completion

Notwithstanding anything to the contrary in the Amended M7 Motorway Project Deed:

- (a) each Company undertakes to Transport that the direct legal and beneficial owners of WSO Co as at the date of this deed will remain unchanged until the Date of Integration Completion; and
- (b) subject to clause 14.2(c), the Companies must not permit:
- (i) any Change of Control of either Company, any Partner, the State Works Contractor or the Borrower; or
 - (ii) a person:
 - A. who is not an Ultimate Shareholder, or
 - B. who is an Ultimate Shareholder but which is an entity managed by an Ultimate Shareholder (and not ultimately owned by an Ultimate Shareholder) which does not at the date of this deed or following any event which is approved by Transport under this clause 14, have an economic interest in the shares of either Company or the State Works Contractor,

to acquire any shares, units or an economic interest in shares or units in any Holding Company (other than an Ultimate Shareholder) of either Company, any Partner, the State Works Contractor or the Borrower,

prior to the Date of Integration Completion without the prior written consent of Transport (which may not be unreasonably withheld).
- (c) Transport's consent is not required for a change in, or the appointment of, the responsible entity, trustee or custodian of an entity where there is no change in the ultimate beneficial owner of the entity concerned.

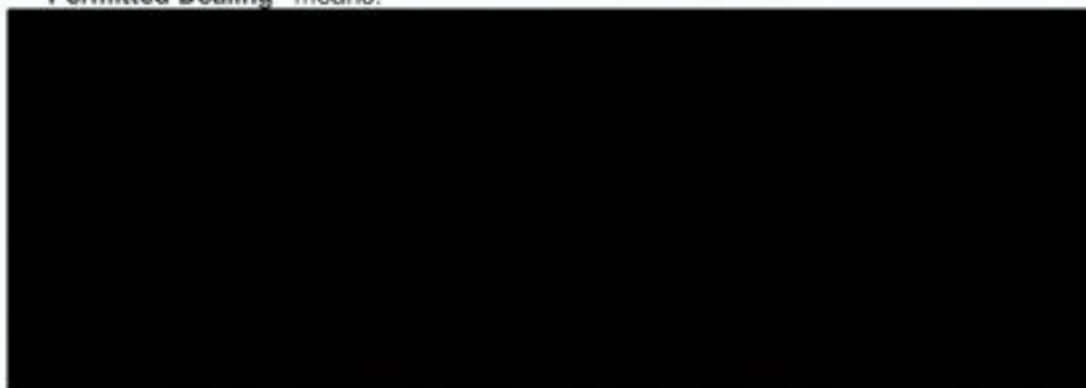
- (d) Transport will be deemed to be acting reasonably under clause 14.2(b)(ii) if it withholds its consent where Transport is of the reasonable opinion that:
- (i) neither Company has provided it with full details of the proposed change and any further information reasonably requested by Transport; or
 - (ii) the new person:
 - A. is not in compliance with applicable anti-money laundering laws and anti-terrorism laws; and
 - B. does not demonstrate to the reasonable satisfaction of Transport that it is both a fit and proper person to be an investor in the Integration Project and is of sufficient financial standing to meet its, and to put the Companies in funds to meet their, funding obligations in relation to the Integration Project.

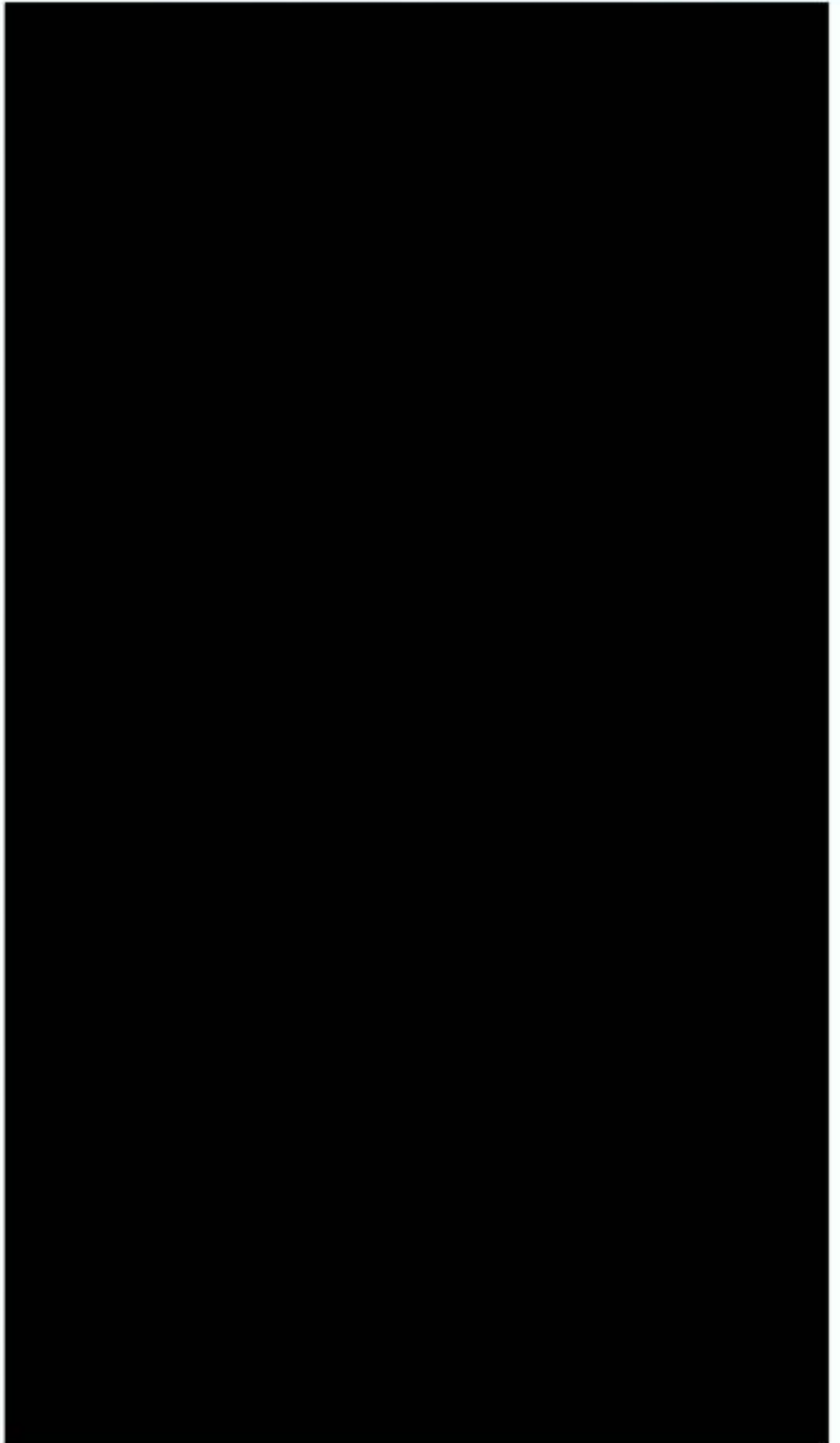
14.3 Definitions

The following definitions apply to this clause 14. If a capitalised term is used in this clause 14 (or in a definition which is relevant to it) and is not defined in this clause 14.3, then clause 1.1 will apply:

- (a) **"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, the EPD, the Integration Equity Commitment Deed, the Integration Project Documents or any Project Documents;
- (b) **"Change of Control"** means, in relation to a company, trust or other entity:
 - (i) if the company, trust or other entity comes under the Control of a person (acting alone or together with its Associates) who did not Control the company, trust or other entity as at the Satisfaction Date or following any event which is approved by Transport under clause 31.1, 31.2 or 31.3 of the Amended M7 Motorway Project Deed or clause 14.1 or 14.2 of this deed; or
 - (ii) if a person (acting alone or together with its Associates) who was in Control of a company, trust or other entity as at the Satisfaction Date or following any event which is approved by Transport under clause 31.1, 31.2 or 31.3 of the Amended M7 Motorway Project Deed or clause 14.1 or 14.2 of this deed stops having Control of the company, trust or other entity,

other than as a result of a Permitted Dealing.
- (c) **"Permitted Dealing"** means:





15. Expenses and stamp duties

15.1 Expenses

Subject to clause 15.2, 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.

15.2 Stamp duties

As between the parties, Transport must pay (or reimburse the Companies within 10 Business Days for) all stamp, registration and similar taxes including fines and penalties payable to or required to be paid by any appropriate Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any Integration Project Documents or any payment receipt or other transaction contemplated by them.

16. Governing law and jurisdiction

16.1 Governing law

This deed is governed by and will be construed according to the laws of New South Wales.

16.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, where that venue falls within clause 16.2(a).

17. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Transport

Address: Western Sydney Project Office
Transport for NSW
Level 7, 27 Argyle Street
Parramatta NSW 2150

Email: [REDACTED]@transport.nsw.gov.au

Attention: Project Director M12 Motorway

With copy to: Director, Motorway Partnerships

Companies

Address: 101 Wallgrove Road
Eastern Creek NSW 2766

Email: Legal@nwroads.com.au

Attention: Company Secretary

(or as otherwise notified in writing by that party to the other parties from time to time);

(c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary or authorised agent (including the Representative) of, that party;

(d) must be either:

(i) delivered or posted by prepaid post to the address of the addressee; or

(ii) subject to clause 17(e), sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address; and,

in accordance with clause 17(b);

(e) in the case of Notices which have been sent in accordance with clause 17(d)(ii) under clauses 9 and 12, in addition to the Notice sent pursuant to clause 17(d)(ii), a copy of the Notice must also be printed and delivered or posted to the person's address in accordance with clause 17(d)(i);

(f) will be deemed to be received by the addressee:

(i) (in the case of prepaid post) on the second business day after the date of posting;

(ii) (in the case of email): if it is sent

A. 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

B. 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; and

where clause 17(d)(ii) applies, the relevant notice will be taken to have been received on the later of the date determined in accordance with clause 17(f)(i) and 17(f)(ii);

(iii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 17(b), unless that delivery is made on a non-business day, or after 5.00pm on a business day, in which case that communication will be deemed to have been received at 9.00am on the next business day,

and where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication;

- (g) which is received by a Company will be deemed to have been received by the other Company at the same time; and
- (h) will, in the case of a notice to which clause 17(e) applies, will not be effective unless it is delivered in accordance with clause 17(d)(i). A notice issued pursuant to clause 17(d)(i) and a notice issued pursuant to clause 17(d)(ii) must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.

18. Miscellaneous

18.1 Entire agreement

To the extent permitted by Law, this deed, the Transport Project Documents to which either Company are party, the Amended M7 Motorway Project Deed and the Project Documents (as defined in the Amended M7 Motorway Project Deed) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties and supersede any agreement made prior to the date of this deed (whether or not in writing) between the parties, in relation to the subject matter of those documents.

18.2 Further acts

Each party will promptly do and perform 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 another party to give effect to this deed.

18.3 Indemnities

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

18.4 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 a party 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) Unless expressly provided otherwise, any waiver or consent given by a party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by a party of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

18.5 Consents

Any consent or approval referred to in, or required under, this deed from Transport may be given or withheld, or may be given subject to any conditions as Transport (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

18.6 Cost of performing obligations

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

18.7 Interest

If a party does not pay any money payable by it to another party under this deed by the due date, the first mentioned party must pay interest on that amount on demand by the other party. Interest is:

- (a) payable from the due date until payment is made by the first mentioned party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged; and
- (b) (subject to clause 10.2), calculated on daily balances at the rate of [REDACTED] per annum; and
- (c) [REDACTED]

18.8 Moratorium legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a Company any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by Transport of any right, power or remedy under this deed or otherwise, are expressly waived.

18.9 Replacement body interpretation

If an Authority or body referred to in this deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation, this deed is deemed to refer to that new organisation; or
- (b) ceases to exist, this deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former Authority or body.

18.10 No agency

Except as expressly permitted or contemplated by this deed, a Company will not in connection with the Integration Project or otherwise directly or indirectly hold out nor permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Integration

Project is being carried on or managed or supervised by Transport nor must a Company act as or represent itself to be the servant or agent of Transport.

18.11 Amendments

Subject to clause 10.2 of Annexure A, this deed may only be varied by a document signed by or on behalf of each party.

18.12 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one deed.

18.13 Non reliance

Without limiting clauses 7.7, 7.7A, 7.8, 7.9, 7.11, 7.14, 7.16, 7.18(c), 7.18(d) and 9.6 of Annexure A, each Company:

- (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 each Company by Transport or anyone on behalf of Transport 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 Transport has entered into this deed relying upon the warranties in clauses 18.13(a) and (b).

18.14 English language

All documents provided under or in connection with this deed must be in English and all communications between the parties must be in the English language.

18.15 Survival of certain provisions; no merger

- (a) Without limiting clause 18.3(c):
 - (i) clauses 1, 2.3(c), 7 (only to the extent in respect of the Integration Project prior to the rescission, termination or expiration of this deed), 8, 9, 12, 16, 17, 18.7 and this clause 18.15; and
 - (ii) 5.3(d), 5.8(d), 5.14, 5.21(e), 6.1(d) to 6.1(fa) (inclusive), 7.5(a)(iii), 7.8, 7.11(f), 18.2 (but only where the circumstances giving rise to the relevant Loss or Claim occur prior to the rescission, termination or expiration of this deed), 18.3, 18.4, 19.2(a)(iii), and 22 of Annexure A,

(together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed.

- (b) Without limiting clause 18.3(c), if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses and 18.7; 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. 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.

18.16 Approvals not to affect Companies' 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 Transport will not, except where this deed expressly provides to the contrary, relieve a Company from its obligations under this deed.

18.17 Ring Fencing

- (a) Subject to clause 18.17(f), the Companies must not (and must procure that the Borrower, each Holding Company of each Company, each Partner, the Partnership, the State Works Contractor and each Sponsor Entity do not) without Transport's consent enter into any transactions or arrangements, which includes any amendment, variation or waiver of a provision under any transaction or arrangement, with any Associate of a Company (**Associate Entity**) which are:

- (i) not on an arm's length and commercial basis; or
- (ii) unnecessary for, or of a scale and nature beyond that required for, the efficient and effective carrying out of the obligations of the Companies and the State Works Contractor under the Integration Project Documents, or the Project Documents (as defined in the Amended M7 Motorway Project Deed), or the Project Documents (as defined in the NorthConnex Project Deed),

provided that whether a particular transaction or arrangement is on an arm's length and commercial basis must be determined objectively having regard to:

- (iii) whether the Company, the Borrower, the Holding Company of the Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity (as applicable) would have entered into the transaction or arrangement if they were:
 - A. unrelated to the Associate Entity;
 - B. free from undue influence or pressure by the Associate Entity;
 - C. through their relevant decision-makers, sufficiently knowledgeable about the circumstances of the transaction or arrangement, sufficiently experienced in business and sufficiently well advised to be able to form a sound judgment as to what is in their interests; and
 - D. concerned only to achieve the best available commercial result for themselves in all of the circumstances;
- (iv) whether the Company, the Borrower, the Holding Company of the Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity (as applicable) acted with the interests of any Associate Entity in mind;
- (v) whether the Company, the Borrower, the Holding Company of the Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity (as applicable) on the one hand and the Associate Entity on the other hand dealt with each other as arm's length parties

would normally do, so that the outcome of their dealing is a matter of real bargaining; and

- (vi) whether the transaction or arrangement represents an equivalent or better commercial outcome for the Company, the Borrower, the Holding Company of the Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity (as applicable) than would be available from an entity other than the Associate Entity.
- (b) The Companies must bear Transport's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
- (i) any enquiries which Transport may make for the purposes of determining whether to consent to the transaction or arrangement the subject of a request for consent under clause 18.17(a); and
 - (ii) the preparation, negotiation and execution of any documentation required to give effect to such transaction or arrangement, and any stamp duty or similar charges in relation to such documentation.
- (c) The Companies must include with its annual and half-yearly reporting provided under the Amended M7 Motorway Project Deed, a report describing all transactions or arrangements entered into by a Company, the Borrower, a Holding Company of a Company, a Partner, the Partnership, the State Works Contractor and a Sponsor Entity with an Associate Entity in the immediately prior six month reporting period, including, as a minimum, the following details:
- (i) a statement as to whether or not the Companies consider the transactions or arrangements required consent from Transport under clause 18.17(a);
 - (ii) information as to the procurement process (if any) followed in respect of the relevant transaction or arrangement;
 - (iii) the nature of the work or services to be provided under each relevant transaction or arrangement and the fees paid or other consideration provided in respect of each transaction or arrangement in the reporting period; and
 - (iv) such other details and information regarding the relevant transactions or arrangements as may reasonably be requested by Transport.
- (d) If an emergency situation occurs in connection with the Integration Project and a transaction or arrangement (within the meaning of clause 18.17(a)) with an Associate Entity is urgently required to:
- (i) provide access to emergency services or emergency traffic control;
 - (ii) prevent any occurrence that is likely to cause damage to the Integration Project or compromise the safety of any person; or
 - (iii) address significant unforeseen congestion on the M7 Motorway,

and there is not already a transaction or arrangement (within the meaning of clause 18.17(a)) in place in accordance with the Integration Project Documents to respond to or remedy such an emergency situation, then a Company, the Borrower, a Holding Company of a Company, a Partner, the Partnership, the State Works Contractor and/or a Sponsor Entity may, without Transport's consent, enter into the relevant transaction or arrangement for a period not exceeding 24 hours duration

after the time that the relevant emergency situation commences, provided that the Companies must:

- (iv) immediately notify Transport of the relevant transaction or arrangement and the emergency situation to which it relates and provide such details and information regarding the relevant transaction or arrangement as may reasonably be requested by Transport;
- (v) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, demonstrate to the reasonable satisfaction of Transport that the relevant transaction or arrangement:
 - A. was the best commercial outcome available in the circumstances;
 - B. does not result in a lesser commercial outcome for the Companies than would be available from an entity other than the Associate Entity;
 - C. was free from undue influence or pressure by the Associate Entity and was not entered into with the interests of the Associate Entity in mind; and
 - D. was necessary for, and was not of a scale or nature beyond what was required to respond to or remedy the relevant emergency situation;
- (vi) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, provide such details, documents and information in connection with the relevant transaction or arrangement as may reasonably be requested by Transport including, without limitation:
 - A. information and records of the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity in connection with all procurement processes relating to the relevant transaction or arrangement; and
 - B. the steps taken by the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, the State Works Contractor or the Sponsor Entity to ensure that there are appropriate processes in place to respond to or remedy any continuation or recurrence of the emergency situation;
- (vii) at the end of the quarter in which the relevant transaction or arrangement was entered into, provide a written report to Transport setting out the aggregate expenditure, commitment or forgiveness required or provided under the relevant transaction or arrangement; and
- (viii) ensure that the aggregate expenditure, commitment or forgiveness required or provided under the relevant transaction or arrangement is

reported in the next occurring half-yearly financial reports for the Companies.

- (b) The reference to variation in clause 18.17(a) includes a variation to or under a transaction or arrangement and including a variation, expansion or contraction of the scope of services and any instruction for the performance of any additional services whether contemplated under the transaction or arrangement or not.
- (c) The parties acknowledge and agree that by entering into this deed, Transport is deemed to have consented to the following agreements to the extent such agreements require consent under clause 18.17(a):
 - (i) each Integration Equity Document, each Integration Debt Finance Document and each Integration Project Document;
 - (ii) the M7 Motorway Project Deed, the Amended M7 Motorway Project Deed and each of the Project Documents, Debt Financing Documents and Equity Documents (each as defined in the Amended M7 Motorway Project Deed);
 - (iii) the NorthConnex Project Deed, each of the Project Documents, Debt Financing Documents and Equity Documents (each as defined in the NorthConnex Project Deed) and the NorthConnex Amending Deed;
 - (iv) any agreement in connection with a transaction contemplated by any of the documents referred to in paragraphs (i) to (iii) above.

18.18 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

18.19 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of Transport and the Companies 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.

18.20 Companies not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Companies must not, and must ensure that the State Works Contractor does not, seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by Transport against a Company or the State Works Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by Transport against a Company or the State Works Contractor (whether in contract, tort or otherwise), the Companies will indemnify Transport against any Loss which Transport is not able to recover from a Company or the State Works Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

18.21 Subcontracts

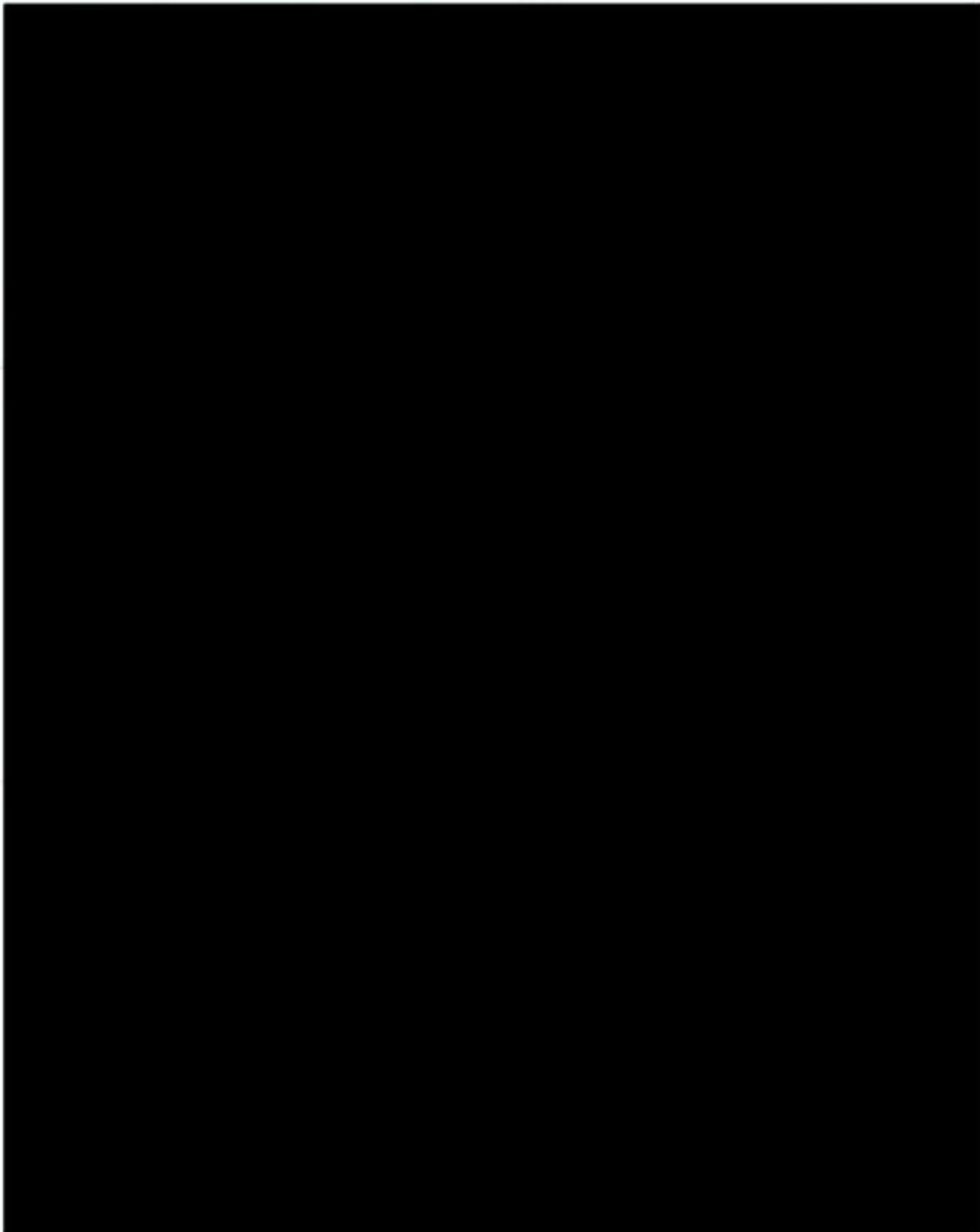
The Companies must:

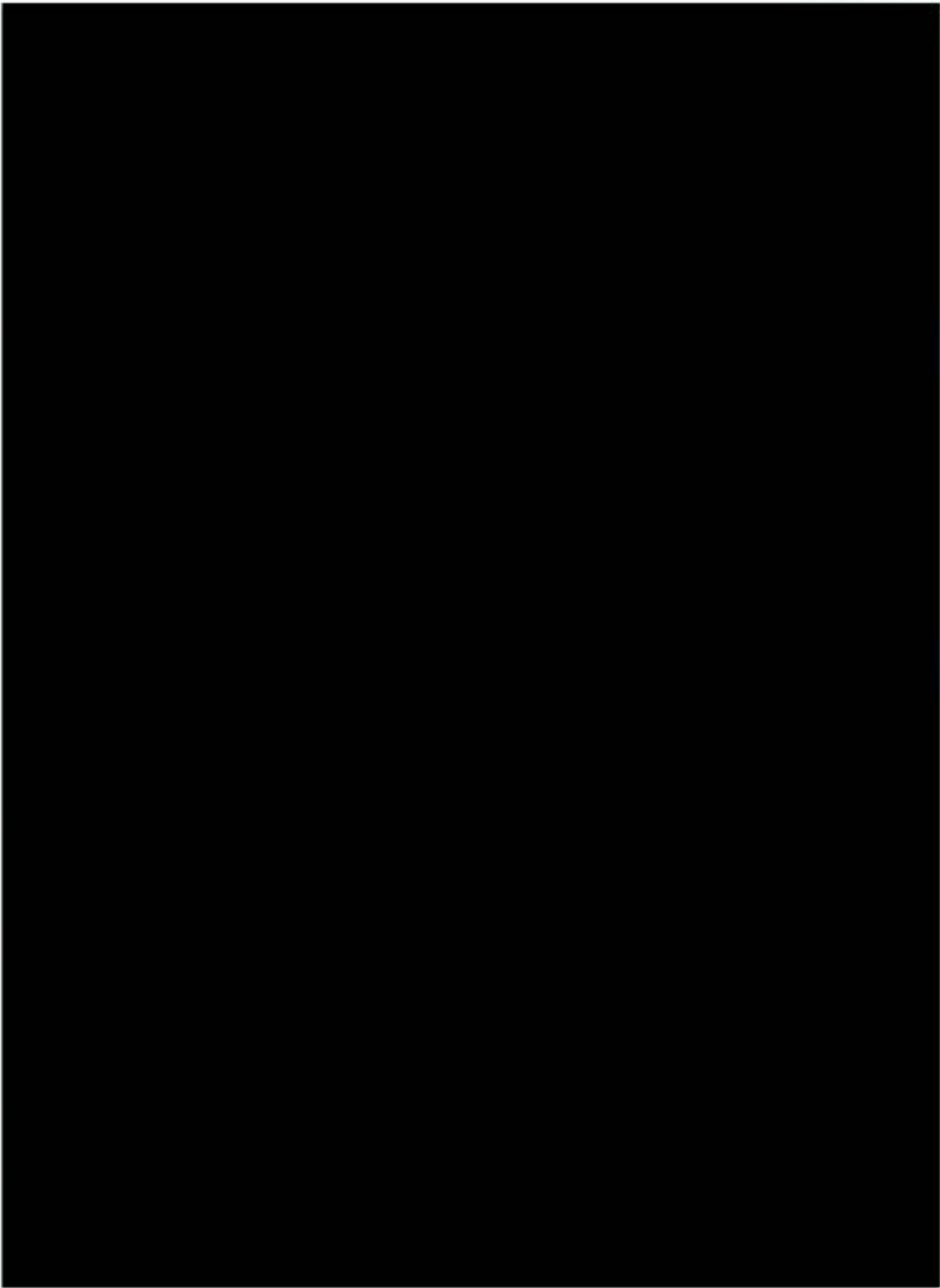
- (a) in each Subcontract into which it or the State Works Contractor enters for the carrying out of the Project Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either 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, and ensure that the State Works Contractor requires, 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 Project Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either 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, and ensure that the State Works Contractor requires, 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 Project Activities that is not covered by clause 1.1(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 either 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.

Schedule 1 – [Not used]

Schedule 2 – [Not used]

Schedule 3 - Commercially Sensitive Information





Schedule 4 – Amendments to the M7 Motorway Project Deed from the Satisfaction Date

With effect from the Satisfaction Date:

1. until the Date of Integration Completion, the following definitions are inserted into clause 1.1 of the M7 Motorway Project Deed:

Amended Motorway Stratum Agreement to Lease has the meaning given to that term in the Integration Project Deed.

Integration FDD means the document entitled "M7 Widening – Funding Default Deed" between each Original Investor and each Sponsor Entity (each as defined therein) dated on or about the date of the Integration Project Deed.

Integration Project has the meaning given in the Integration Project Deed.

Integration Project Deed means the document entitled "M7-M12 Integration Project Deed" between Transport, the Companies and others.

Integration Project Documents has the meaning given in the Integration Project Deed.

Integration Project Event of Default means an "Event of Default" as defined in the Integration Project Deed.

Integration Project Debt has the meaning given in the Integration Project Deed.

Integration Project Termination Event means any of the events listed in clause 9.3 of the Integration Project Deed.

Integration Project Works means each of the "Project Works" and "Temporary Works" and "Project Activities" as defined in Annexure A to the Integration Project Deed.

Motorway Stratum means the stratum of real property to be the subject of the Motorway Stratum Lease, as determined in accordance with the Amended Motorway Stratum Agreement to Lease.

Motorway Stratum No.2 has the meaning contained in the Amended Motorway Stratum Agreement to Lease.

Motorway Stratum Lease means the lease of the Motorway Stratum granted by RMS to WestLink under the Motorway Stratum Agreement to Lease.

2. until the Date of Integration Completion, a new clause 39 is inserted into the M7 Motorway Project Deed as follows:

39. Integration Project

- (a) Transport acknowledges that it consents (including, without limitation, for the purposes of clauses 15.7, 29.1(g) and (l), 29.2(l) and (q) and 35.20 of the Deed) to:
 - (i) the Companies undertaking the Integration Project in accordance with the Integration Project Documents;
 - (ii) the amendment of the Project Documents in accordance with the Integration Project Documents; and
 - (iii) the erection, installation, painting or displaying of any advertising, promotional or similar signage or material on, in, or near, any part of the

Motorway or the Third Party Works which is erected, installed, painted or displayed in accordance with the Integration Project Deed.

- (b) The parties acknowledge and agree that:
- (i) in relation to those parts of the Motorway which are directly affected by the Integration Project Works, the:
- A. Integration Project Works; or
 - B. performance of the Companies' other obligations under the Integration Project Documents,
- if undertaken in accordance with Integration Project Documents do not or will not constitute:
- C. damage, defect or disrepair, for the purposes of clauses 15.1, 15.12, 22.1(c) or 22.8 of this Deed;
 - D. a failure to operate, maintain, repair or open the Motorway or maintain and repair the Third Party Works, for the purposes of clauses 2.1(b) and 15.1 and 15.2 of this Deed; or
 - E. a failure of performance or performance standards under clause 15.1(a)(ii), or a failure to perform the O&M Work under clause 15.3; or
 - F. a failure to comply with any clauses of this Deed identified by the Companies as agreed or determined in accordance with paragraph 1.2(f)(v) of Schedule 10 of Annexure A of the Integration Project Deed or clause 10.4(b)(v) of the Integration Project Deed;
 - G. a Distribution;
- (ii) Integration Project Works undertaken in accordance with the Integration Project Documents do not or will not constitute an "abnormal event" for the purposes of the definition of "Incident";
- (iii) clauses 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15.7(b), 21 and 22 do not apply to the design and construction and completion of the Integration Project and/or the Integration Project Works;
- (iv) for the purposes of clauses 2.1(b), 15.1(a)(i), 15.2, 25.2(e) and 25.3(a)(ii), of this Deed and without limiting clauses 15.2(a)(i) and (ii) of this Deed, WSO Co will not between the Satisfaction Date and the Date of Integration Completion be in breach of its obligation to keep all traffic lanes of the Motorway (including all on-ramps and off-ramps) open to the public for the safe, efficient and continuous passage of vehicles (whether or not the Toll Collection System is operational) to the extent it is necessary to close all or any part of the Motorway as a result of or in connection with:
- A. the design and construction of the Integration Project in accordance with the Integration Project Documents;
 - B. the remedy of an Integration Project Event of Default (or overcoming its effects) in accordance with the Integration Project Deed;

- C. WSO Co's compliance with a direction by Transport or other obligation under the Integration Project Deed, or to enable Transport to take any action in connection with the exercise by Transport of its step-in rights; or
 - D. the reinstatement of the Motorway in accordance with the Integration Project Deed;
- (v) the Companies' obligation to indemnify Transport from and against any Claim or Loss suffered or incurred by Transport in accordance with clause 4.4, 7.5, 7.6, 7.7, 7.15, 7.16, 22.2 or 35.3 or any other indemnity contained in any Project Document will be reduced to the extent the Companies are required to indemnify Transport under the Integration Project Deed in respect of such Claim or Loss;
- (vi) the Companies will not be entitled to terminate this Deed pursuant to:
- A. clause 25.5(a) of this Deed to the extent the Final Determination solely prevents the Companies from undertaking the Integration Project Works substantially in accordance with the Integration Project Deed;
 - B. clause 25.5(b) of this Deed to the extent such legislation solely prohibits or has the effect of prohibiting the Companies from undertaking the Integration Project Works substantially in accordance with the Integration Project Deed;
 - C. clause 25.5(c) of this Deed to the extent such resumption solely relates to land on which the Integration Project Works are to be carried out and as a result the Companies are prevented from undertaking the Integration Project Works substantially in accordance with the Integration Project Deed; or
 - D. clause 25.5(d) of this Deed to the extent such breach solely prevents the Companies from undertaking the Integration Project Works substantially in accordance with the Integration Project Deed;
- (vii) if an Integration Project Event of Default or an Integration Project Termination Event occurs before Integration Completion:
- A. that Integration Project Event of Default or Integration Project Termination Event will be the subject of the Integration Project Deed and not this Deed; and
 - B. the parties will have no recourse to this Deed in respect of the Integration Project Event of Default or the Integration Project Termination Event, including as a result of any act or omission of the parties while the Integration Project Event of Default or the Integration Project Termination Event (as applicable) is subsisting;
- (viii) a failure by the Companies to remedy any Integration Project Event of Default or Integration Project Termination Event in accordance with the Integration Project Deed will not provide Transport with recourse to clause 25 of this Deed;
- (ix) the definition of the term "Public Transport Corridor" is deleted and replaced with:

"Public Transport Corridor" means:

- (a) the real property in between the carriageways of the Motorway which will not be included in the Motorway Stratum, however excluding any real property over which a construction licence is granted pursuant to the Integration Project Documents;
- (x) the definition of the term "Permitted Dealing" is amended as follows:
 - (i) in paragraph (e), a reference to the FDD also includes a reference to the Integration FDD; and
 - (ii) a new paragraph (g) is included:
 - "(g) any other transaction which is consented to by RMS under clause 14 (*Assignment*) of the Integration Project Deed and/or clause 8 (*Assignment*) of the State Works Deed (as defined in the Integration Project Deed)."
- (xi) each of the Blended Equity Return, Early Termination Amount, Initial Equity Return and Concession Enhancement Post-Completion Return are to be calculated (should they need to be calculated) ignoring the existence or impact of the Integration Project;
- (xii) clause 32.2 does not apply to the Integration Project Documents;
- (xiii) clauses 39(b)(i)(A), 39(b)(iii), (b)(v), (b)(xi), (b)(xiii) and (b)(xiv) are included in the list of clauses which will survive rescission, termination or expiration of this Deed, as set out in clause 35.15 of this Deed; and
- (xiv) references in this Deed to the:
 - A. "Project", "Project Assets", "Motorway", "Company's Work", "O&M Work", "Property Works" and "Operating Services" do not include the Integration Project or the Integration Project Works;
 - B. "Scope of Works and Technical Criteria" do not include the "Scope of Works and Technical Criteria" as defined in Annexure A to the Integration Project Deed;
 - C. "Project Debt" does not include the Integration Project Debt and "Debt Financing Documents" do not include any of the Integration Debt Finance Documents as defined in the Integration Project Deed;
 - D. "Operating Costs" do not include any costs associated with undertaking the Integration Project or the Integration Project Works;
 - E. "Cash Flow Available for Debt Service" is to be calculated ignoring the impact of undertaking the Integration Project or the Integration Project Works;
 - F. "Equity Documents" do not include the Integration Equity Documents as defined in the Integration Project Deed; and
 - G. "Initial Equity" and "Equity" do not include any amounts contributed to the Partnership or WSO Co, or any equity or share capital subscribed to the Partnership or WSO Co, in connection with the Integration Project.

(c) until the Date of Integration Completion, clause 35.20 of the M7 Motorway Project Deed is amended as follows:

- (a) Subject to clause 35.20(d), the Companies must not (and must procure that the Borrower, each Holding Company of each Company, each Partner, the Partnership, [the State Works Contractor](#) and each Sponsor Entity do not) without RMS's consent enter into any transactions or arrangements, which includes any amendment, variation or waiver of a provision under any transaction or arrangement, with any Associate of a Company (**Associate Entity**) which are:
- (i) not on an arm's length and commercial basis; or
 - (ii) unnecessary for, or of a scale and nature beyond that required for, the efficient and effective carrying out of the obligations of the Companies [and the State Works Contractor](#) under the Integration Project Documents, the Project Documents or the Project Documents (as defined in the NorthConnex Project Deed),

provided that whether a particular transaction or arrangement is on an arm's length and commercial basis must be determined objectively having regard to:

- (iii) whether the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, [the State Works Contractor](#) or the Sponsor Entity (as applicable) would have entered into the transaction or arrangement if they were:
 - A. unrelated to the Associate Entity;
 - B. free from undue influence or pressure by the Associate Entity;
 - C. through their relevant decision-makers, sufficiently knowledgeable about the circumstances of the transaction or arrangement, sufficiently experienced in business and sufficiently well advised to be able to form a sound judgment as to what is in their interests; and
 - D. concerned only to achieve the best available commercial result for themselves in all of the circumstances;
- (iv) whether the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, [the State Works Contractor](#) or the Sponsor Entity (as applicable) acted with the interests of any Associate Entity in mind;
- (v) whether the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, [the State Works Contractor](#) or the Sponsor Entity (as applicable) on the one hand and the Associate Entity on the other hand dealt with each other as arm's length parties would normally do, so that the outcome of their dealing is a matter of real bargaining; and
- (vi) whether the transaction or arrangement represents an equivalent or better commercial outcome for the Company, the Borrower, the Holding Company of a Company, the Partner,

the Partnership, [the State Works Contractor](#) or the Sponsor Entity (as applicable) than would be available from an entity other than the Associate Entity.

- (b) The Companies must bear RMS's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
- (i) any enquiries which RMS may make for the purposes of determining whether to consent to the transaction or arrangement the subject of a request for consent under clause 35.20(a); and
 - (ii) the preparation, negotiation and execution of any documentation required to give effect to such transaction or arrangement, and any stamp duty or similar charges in relation to such documentation.
- (c) The Companies must include with their annual reporting provided under clause 16.1(g)(i) and their half-yearly financial report provided under clause 16.1(g)(ii), a report describing all transactions or arrangements entered into by a Company, the Borrower, a Holding Company of a Company, a Partner, the Partnership, [the State Works Contractor](#) or a Sponsor Entity with an Associate Entity in the immediately prior six month reporting period, including, as a minimum, the following details:
- (i) a statement as to whether or not the Companies consider the transactions or arrangements required consent from RMS under clause 35.20(a);
 - (ii) information as to the procurement process (if any) followed in respect of the relevant transaction or arrangement;
 - (iii) the nature of the work or services to be provided under each relevant transaction or arrangement and the fees paid or other consideration provided in respect of each transaction or arrangement in the reporting period; and
 - (iv) such other details and information regarding the relevant transactions or arrangements as may reasonably be requested by RMS.
- (d) If an emergency situation occurs in connection with the Motorway and a transaction or arrangement (within the meaning of clause 35.20(a)) with an Associate Entity is urgently required to:
- (i) provide access to emergency services or emergency traffic control;
 - (ii) prevent any occurrence that is likely to cause damage to the Motorway or compromise the safety of any person; or
 - (iii) address significant unforeseen congestion on the Motorway,

and there is not already a transaction or arrangement (within the meaning of clause 35.20(a)) in place in accordance with the Project Documents to respond to or remedy such an emergency situation, then a Company, the Borrower, a Holding Company of a Company, a Partner, the Partnership, [the State Works Contractor](#) and/or a Sponsor Entity

may, without RMS's consent, enter into the relevant transaction or arrangement for a period not exceeding 24 hours duration after the time that the relevant emergency situation commences, provided that the Companies must:

- (i) immediately notify RMS of the relevant transaction or arrangement and the emergency situation to which it relates and provide such details and information regarding the relevant transaction or arrangement as may reasonably be requested by RMS;
- (ii) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, demonstrate to the reasonable satisfaction of RMS that the relevant transaction or arrangement:
 - A. was the best commercial outcome available in the circumstances;
 - B. does not result in a lesser commercial outcome for the Companies than would be available from an entity other than the Associate Entity;
 - C. was free from undue influence or pressure by the Associate Entity and was not entered into with the interests of the Associate Entity in mind; and
 - D. was necessary for, and was not of a scale or nature beyond what was required to respond to or remedy the relevant emergency situation;
- (iii) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, provide such details, documents and information in connection with the relevant transaction or arrangement as may reasonably be requested by RMS including, without limitation:
 - A. information and records of the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, [the State Works Contractor](#) or the Sponsor Entity in connection with all procurement processes relating to the relevant transaction or arrangement; and
 - B. the steps taken by the Company, the Borrower, the Holding Company of a Company, the Partner, the Partnership, [the State Works Contractor](#) or the Sponsor Entity to ensure that there are appropriate processes in place to respond to or remedy any continuation or recurrence of the emergency situation;
- (iv) at the end of the quarter in which the relevant transaction or arrangement was entered into, provide a written report to RMS setting out the aggregate expenditure, commitment or

forgiveness required or provided under the relevant transaction or arrangement; and

- (v) ensure that the aggregate expenditure, commitment or forgiveness required or provided under the relevant transaction or arrangement is reported in the next occurring half-yearly financial reports for the Companies.
 - (e) The reference to variation in clause 35.20(a) includes a variation to or under a transaction or arrangement and including a variation, expansion or contraction of the scope of services and any instruction for the performance of any additional services whether contemplated under the transaction or arrangement or not.
 - (f) The parties acknowledge and agree that by entering into this Deed, RMS is deemed to have consented to the following agreements to the extent such agreements require consent under clause 35.20(a):
 - (i) the O&M Agreement;
 - (ii) the TCM Agreement;
 - (iii) the TCM Technical Services Agreement;
 - (iv) the Technology Implementation and Services Agreement;
 - (v) the WSO Co Funding Facility Deed;
 - (vi) the Management Services Agreement;
 - (vii) the NorthConnex/M7 Interface Deed;
 - (viii) M7 Concession Enhancement Payment Deed between WSO Co Pty Limited and NorthConnex Company Pty Limited; **and**
 - (ix) Intercompany Funding and Payment Directions Deed between NorthConnex Finance Pty Limited, NorthConnex Company Pty Limited, NorthConnex State Works Contractor Pty Limited and WSO Co Pty Limited; and
 - (x) [each of the Integration Finance Documents and the Integration Project Documents, the Integration FDD, the Integration Equity Documents \(as defined in the Integration Project Deed\) and the NorthConnex Amending Deed \(as defined in the Integration Project Deed\).](#)
3. between the Date of Returned Works Construction Completion and the Date of Integration Completion, a new clause 40 is inserted into the M7 Motorway Project Deed as follows:

40. EDC Ramps

- (a) In this clause 40:

Date of Integration Completion has the meaning given in the Integration Project Deed.

Date of Returned Works Completion has the meaning given in the Integration Project Deed.

EDC Ramps means those parts of the Returned Works which are within the EDC Retained Works Site as at the Date of Returned Works Completion in respect of the EDC Works.

EDC Ramps Site means the area marked as "EDC Retained Works" on the plan which is contained in Exhibit L to the Integration Project Deed.

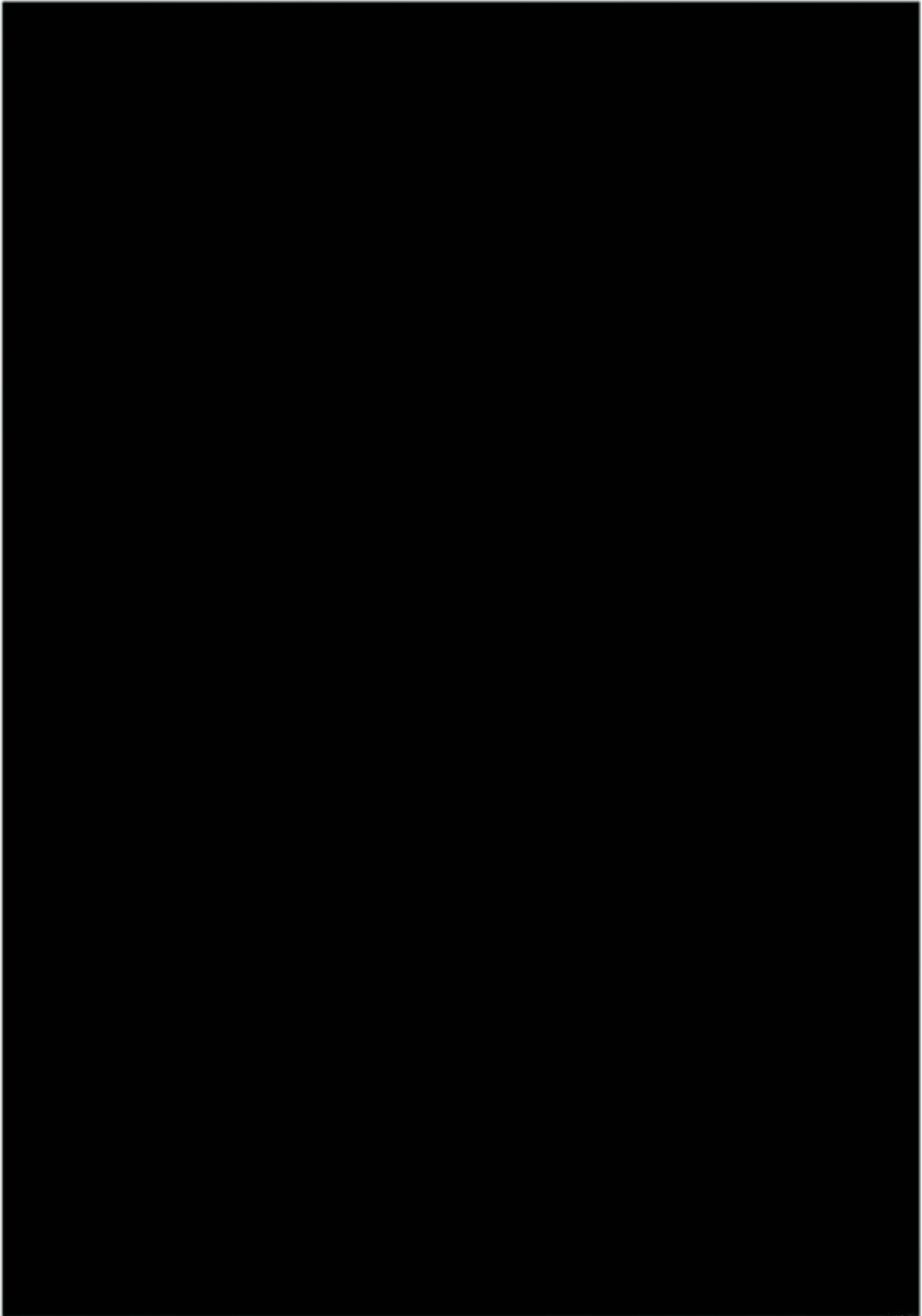
Interim Operating Period means the period commencing on the Date of Returned Works Construction Completion and ending on the Date of Integration Completion.

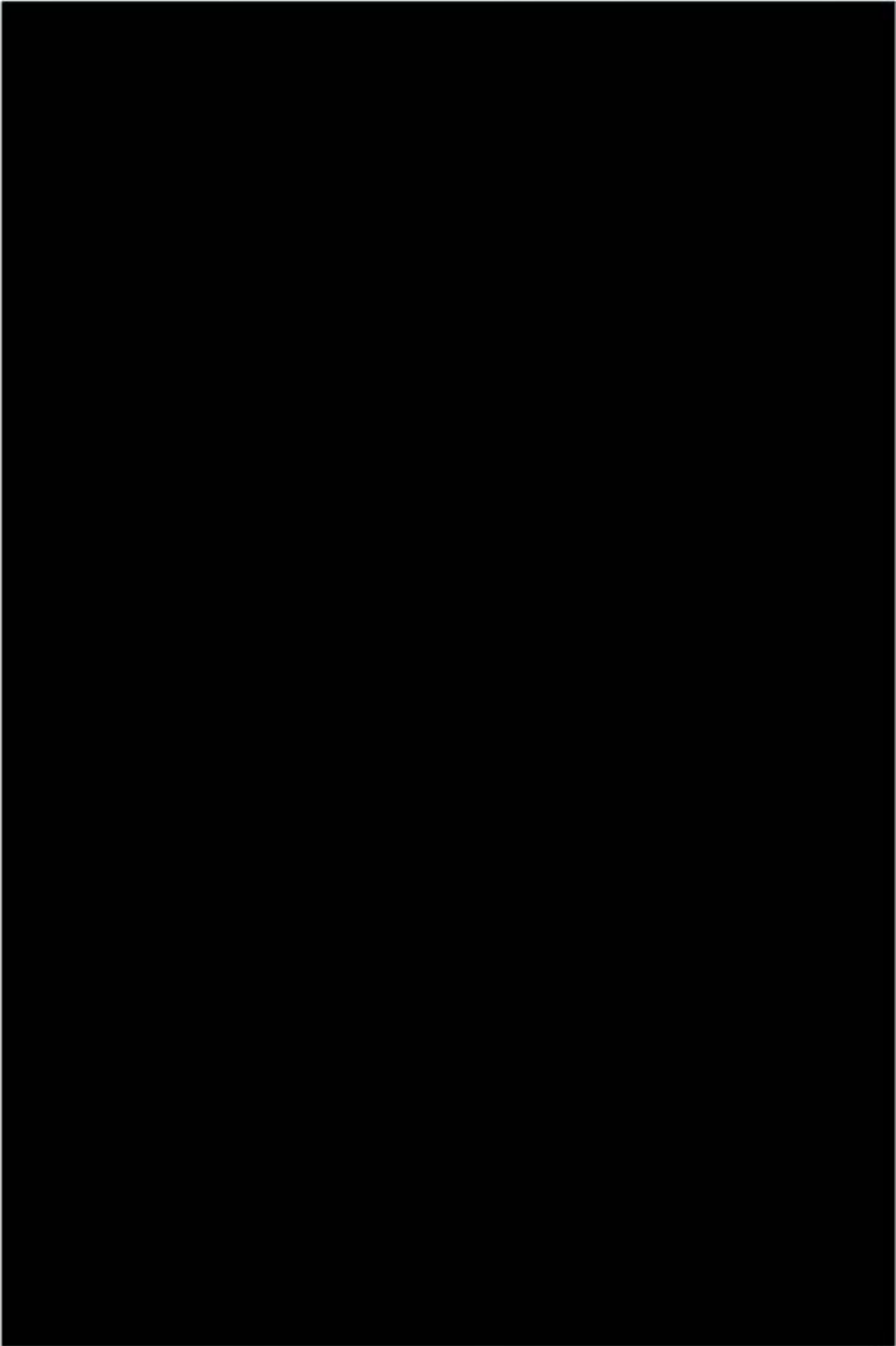
Operating Obligations means the provisions in this Deed relating to the Companies' obligations to operate, maintain and repair the Motorway.

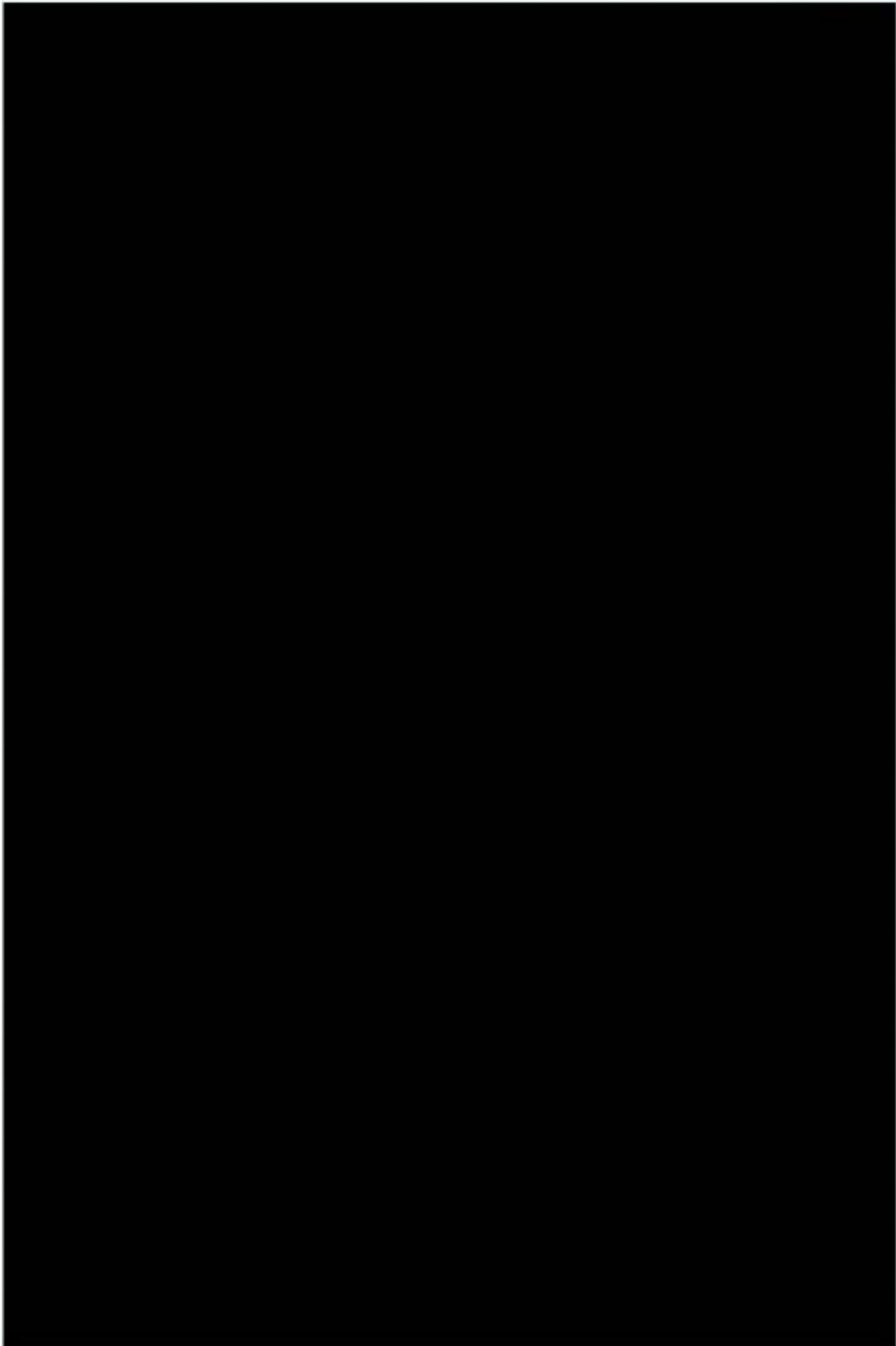
Returned Works Completion has the meaning given in the Integration Project Deed.

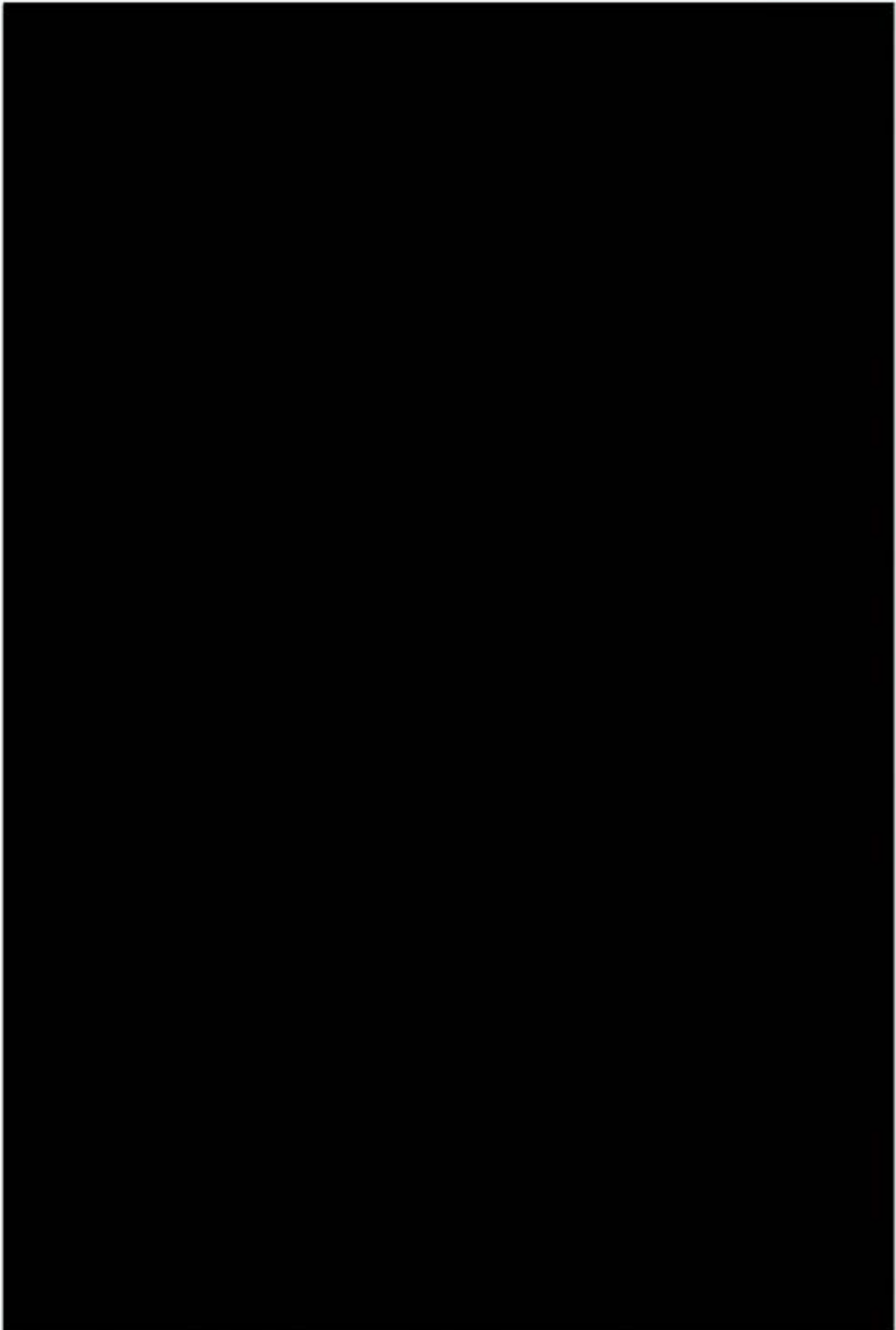
- (b) The Companies must, during the Interim Operating Period, operate, maintain and repair the EDC Ramps in accordance with the Operating Obligations as if:
- (i) all references to the "Motorway" in the Operating Obligations included references to the EDC Ramps;
 - (ii) all references to the "Motorway" in the definitions referred to in the Operating Obligations included references to the EDC Ramps; and
 - (iii) all references to the "Motorway Stratum" included the EDC Ramps Site.

Schedule 8 – Cost Payment Schedule











Schedule 9 –Dispute Resolution Procedure

(Clause 12)

1.1 Disputes

- (a) Unless otherwise expressly provided in this deed, all Disputes between Transport (on the one hand) and the Companies and/or State Works Contractor (on the other hand) must be resolved in accordance with this Dispute Resolution Procedure.
- (b) The parties acknowledge and agree:
- (i) the objective of the Dispute Resolution Procedure and, in particular the establishment of the Executive Steering Group (**ESG**), is to:
- A. enable the early identification of issues; and
- B. provide opportunities for the parties to resolve these through discussions;
- (ii) the processes regarding:
- A. referral to expert determination; and
- B. referral after expert determination,
- apply to Disputes which are not resolved in accordance with section 1.2 of this Schedule 9.

1.2 The Executive Steering Group

- (a) (**Establishment**): Transport and the Companies acknowledge and agree (and the Companies will procure that the State Works Contractor acknowledges and agrees) that they will establish a group for the duration of the Project Activities until expiry of the last Defects Corrections Period to expire consisting of the representatives of the parties specified in Appendix A to this Dispute Resolution Procedure (each an **ESG Member** and together the **Executive Steering Group** or **ESG**).
- (b) When an issue or Dispute is referred to the ESG, or at any time during the course of discussions, the representatives of the Companies and State Works Contractor may seek Transport's consent to invite representatives of the Contractor to attend the ESG (which may be given or withheld in Transport's absolute discretion).
- (c) (**ESG Members**): The parties acknowledge that:
- (i) the ESG Members are senior executives within each party's organisation that are not involved in the day-to-day operational management of the Project;
- (ii) any ESG Member may invite to any ESG Meeting, by agreement of the ESG Members acting reasonably, a representative of its member organisation with the requisite skills and knowledge to assist in the resolution of any issue or Dispute;
- (iii) if an ESG Member is unable to act as a result of death, illness, disability or resignation or termination of employment with the relevant party, then that ESG member will be replaced and the relevant party will appoint a

new representative to the ESG who satisfies the requirements of paragraph 1.2(c)(i) of this Schedule 9.

- (d) **(Functions):** The functions of the ESG are to assist the parties pragmatically, and on a confidential, without prejudice and non-binding basis (unless agreed otherwise by the parties acting with necessary approvals), to seek the resolution of any:
- (i) issue that arises at any time on the Project, which has not yet become a Dispute and are referred to the ESG, in writing, by either party; or
 - (ii) Dispute which has been referred to it in accordance with clause 1.5 of this Schedule 9, notwithstanding and without limiting or affecting the terms of the Dispute Resolution Procedure.
- (e) **(Representatives to seek to resolve):** Before an issue is referred to the Executive Steering Group, Transport's representative and the representative of the Companies and State Works Contractor must have first met (either physically or by phone) and attempted to resolve the issue or Dispute within a reasonable period of time.
- (f) **(Procedure):** The parties acknowledge and agree:
- (i) either party may by written notice to the other party refer an issue or refer a Dispute to the ESG;
 - (ii) the ESG will meet within 10 Business Days of receipt of the written notice referred to in section 1.2(e)(i) to attempt to resolve the issue or Dispute,
- and:
- (iii) all meetings of the ESG, discussions and paperwork generated at the ESG are on a without prejudice and confidential (unless agreed otherwise by the parties in writing); and
 - (iv) without prejudice documents must not be used in any subsequent proceedings.
- (g) **(Decisions of the Executive Steering Group):**
- (i) The ESG Members are free to agree or not agree matters at their discretion, but will act collaboratively to find solutions to referred issues or Disputes that are agreeable to all parties.
 - (ii) No in-principle agreement or recommendation agreed by the ESG Members will be binding on Transport, the Companies or the State Works Contractor, unless:
 - A. each of Transport, the Companies and the State Works Contractor has obtained all relevant internal and third party approvals and have confirmed this by notice in writing to each other; and
 - B. the required notices, directions or other relevant contractual documents have been issued or executed (as relevant) in accordance with the Integration Project Documents (if and as applicable).
- (h) **(Meetings, administration and procedures):**

- (i) The ESG Members shall have broad power to determine their own procedural matters, for the management and coordination of the Executive Steering Group meetings including setting their own meeting times.
 - (ii) Any ESG Member representing the Companies and State Works Contractor will chair the meetings of the ESG (the **ESG Meetings**).
 - (iii) The ESG is not bound by the rules of natural justice and is not required to afford natural justice to any party.
- (i) **(No liability of Executive Steering Group):** The ESG:
- (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.
- (j) **(No reliance or Claim):** No party will be entitled to:
- (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of the ESG nor any ESG Member; or
 - (ii) make any Claim against any such group or committee or any ESG Member,
- arising in connection with anything which the ESG does or fails to do, or any such ESG Member does or fails to do in his or her capacity as an ESG Member.
- (k) **(Party):** For the purposes of this schedule, a reference to "a party" or "the parties" is a reference to each of Transport, the Companies and the State Works Contractor or a combination of them.

1.3 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 this paragraph 1.3 of this Schedule 9;
- (b) the Dispute;
- (c) particulars of the Dispute including relevant matters of fact and law and legal basis of assertions made by the party in relation to the Dispute;
- (d) quantum (in money and, if relevant in time) of the Dispute; and
- (e) the position which the party believes is correct,

(Notice of Dispute).

A copy of the Notice of Dispute must be delivered to the other party in accordance with clause 17 of this deed.

1.4 Discussions between representatives

- (a) As soon as practicable after the delivery of a Notice of Dispute, Transport's Representative and the Representative of the Companies and State Works Contractor must seek to resolve the Dispute within a timeframe agreed by the

parties, or, in the absence of agreement within 10 Business Days from the date of service of the Notice of Dispute.

- (b) The parties acknowledge and agree that either party may, in that parties' sole discretion, nominate an alternate representative to attend on the paragraph 1.4(a) meetings with the other party's representative.

1.5 Meeting of Executive Steering Group

Without limiting paragraph 1.2(d), if:

- (a) The Dispute remains unresolved by Transport's Representative (or alternate representative) and the Representative of the Companies and State Works Contractor (or alternate representative) in accordance with paragraph 1.4(a); and
- (b) the issue or Dispute has not previously been referred to the ESG,
- then:
- (c) the ESG must meet and seek to resolve the Dispute in accordance with the processes contained in paragraph 1.2 within the timeframe agreed by the parties, or, in the absence of agreement within 10 Business Days from the date of completion of the paragraph 1.4(a) meeting.

1.6 Referral to expert determination

If the Dispute has not been resolved within 20 Business Days after the ESG has met to resolve the Dispute the subject of a Notice of Dispute in accordance with paragraph 1.5(c) (or such longer period as agreed in writing by the parties), or if clause 1.5 does not apply and the Dispute remains unresolved, then the Dispute will be referred to expert determination in accordance with this Schedule 9 unless the parties agree in writing that the Dispute is not suitable for an expert to determine.

1.7 Expert Determination

- (a) The parties agree that any Dispute which is referred to expert determination will be determined in accordance with this paragraph 1.7 and the Resolution Institute Rules.
- (b) The parties acknowledge and agree:
- (i) to the extent allowed by law, if:
- A. the amount determined by the expert in relation to a Dispute referred to expert determination (and (if applicable) any other Dispute between the parties which also arises in respect of the same matters, facts and terms of contract as those detailed in the reference of the Dispute to the expert relevant Dispute) is less than or equal to ██████████ in aggregate;
- then:
- B. despite any other term or condition of this deed, the determination of the expert will be final and binding on the parties except for manifest error of fact or law;
- (ii) subject to 1.7(b)(i), a party may serve a notice of dissatisfaction on the other party within 10 Business Days of the expert's determination; and
- (iii) the notice of dissatisfaction must:

- A. state that it is given under this paragraph;
- B. provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and law;
- C. (if relevant) specify the alleged reasons why the alleged error of fact or law is manifest;
- D. set out the position the party believes to be correct in relation to liability and quantum; and
- E. provide detailed particulars of the quantum of the matters in dispute.

1.8 Settlement

Where a notice of dissatisfaction has been given under paragraph 1.7, the parties may attempt to settle the dispute before the commencement of the litigation or other process (as the case may be). However, unless both parties agree otherwise, if no settlement has been reached within 5 Business Days of the day on which the notice of dissatisfaction was given, the dispute will be taken to be referred to litigation or other process (as the case may be) under paragraph 1.9.

1.9 Referral after expert determination

If a notice of dissatisfaction is served under paragraph 1.7(b)(ii), the Dispute must be referred to litigation unless the parties agree in writing to adopt and be bound by an alternate process.

1.10 Exclusion of proportionate liability from determination or award

In respect of any expert 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 has no power to make any determination or award by applying or considering the provisions of any Relevant Proportionate Liability Legislation.

1.11 Urgent relief

Nothing in this Schedule 9 will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute.

1.12 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 paragraphs 1.2 to 1.7, 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 paragraph.

1.13 Survive termination

This Dispute Resolution Procedure will survive termination of this deed.

1.14 Severance

If at any time any provision of this Schedule 9 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 9; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Schedule 9.

1.15 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: ESG Members**Transport:**

The person who, from time to time, has the following title:

- Head of Sydney Project Delivery
- Executive Director, Western Sydney Project Office

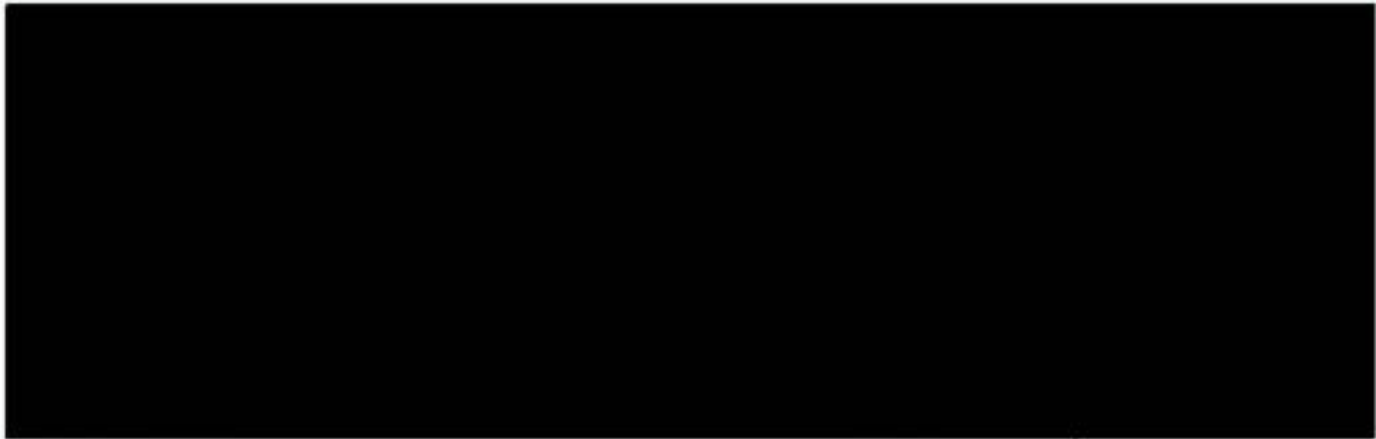
The Companies:

- [REDACTED], GM Delivery Australia
- [REDACTED], GM, NSW

Executed as a deed

TRANSPORT

Signed, sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its duly authorised delegate in the presence of:



WSO CO AND WESTLINK

Executed by WSO Co Pty Limited (ACN 102 757 924) in accordance with section 127 of the Corporations Act 2001 (Cth):



Executed by Westlink Motorway Limited (ACN 096 512 300) in accordance with section 127 of the Corporations Act 2001 (Cth):

