

CLAYTON UTZ

M2 Motorway Upgrade Project Deed

**The Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the
Second in right of the State of New South Wales
Minister**

**Roads and Traffic Authority of New South Wales
RTA**

**The Hills Motorway Limited
Company**

**Hills Motorway Management Limited
Trustee**

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

www.claytonutz.com

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Parties **The Minister for Roads** for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales (the **Minister**)

Roads and Traffic Authority of New South Wales (ABN 64 480 155 255) of 101 Miller Street, North Sydney, New South Wales 2010 (**RTA**)

The Hills Motorway Limited (ABN 28 062 329 828) of Level 3, 505 Little Collins Street, Melbourne Victoria 3000 (**Company**) and **Hills Motorway Management Limited (ABN 89 064 687 645)** as trustee of the Hills Motorway Trust of Level 3, 505 Little Collins Street, Melbourne Victoria 3000 (**Trustee**) (together and as more particularly described in clause 1.9, **Hills Motorway**)

Background

- A. RTA, the Honourable Bruce Baird, the Company and Perpetual Trustees Australia Limited entered into the M2 Motorway Project Deed on or about 26 August 1994 for the financing, planning, design, construction, commissioning, ownership, operation, maintenance and repair of the M2 Motorway.
- B. The M2 Motorway was opened to the public for the continuous passage of vehicles on 26 May 1997.
- C. Hills Motorway submitted a preliminary enhancement proposal (**Proposal**) for the upgrading of the M2 Motorway to the RTA in December 2007.
- D. In July 2008, the NSW Government approved RTA entering into negotiations with Hills Motorway to develop the Proposal into a form which would be acceptable to Government.
- E. The Parties entered into an In Principle Agreement (**IPA**) on 12 October 2009.
- F. The Parties have now agreed that RTA will:
- (a) grant to Hills Motorway the right to, and impose on Hills Motorway the obligation to, finance, plan, design, construct and commission the Project Works and the Temporary Works; and
- (b) then (by amendment to the M2 Motorway Project Deed) grant to the Company the right to, and impose on the Company the obligation to, operate, maintain and repair the M2 Upgrade, and levy and collect tolls.
- G. This Deed sets out the terms and conditions on which:
- (a) Hills Motorway will plan, design, construct and commission the Project Works and the Temporary Works; and
- (b) Hills Motorway may achieve Final Completion.
- H. The M2 Motorway Project Deed as amended pursuant to this Deed sets out the terms and conditions on which:
- (a) Hills Motorway will finance the Project Works and the Temporary Works, own, operate, maintain and repair the M2 Upgrade and levy and collect tolls; and

- (b) Hills Motorway will yield up possession of the M2 Upgrade to RTA in a fully functioning condition.

This Deed provides

1. Definitions and interpretation

1.1 Definitions

In this Deed, capitalised terms will have the meaning given to those terms in Annexure A and:

2010 Amending Deed means the deed entitled "M2 Motorway - 2010 Amending Deed" between the Company, the Trustee, the Minister and RTA dated on or about 25 October 2010.

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

Additional Works has the meaning given to that term in clause 9.6.

Advance Contribution has the meaning given to that term in the Equity Subscription Deed.

Agent has the meaning given to that term in the Amended and Restated Terms of Project Funding Deed.

Amended and Restated Terms of Project Funding Deed means the deed entitled "Amended and Restated Terms of Project Funding Deed" to be entered into between the Company, the Trustee, the Issuer, the Participants, the Agent and the Security Trustee on or after the date of this Deed.

Anticipated RTA Completion Date means the date specified in an RTA 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 A+ by Standard & Poor's (Australia) Pty Limited (ACN 007 324 852) (or its successors and assigns).

Available Funds means, for a Quarter, such funds which would be permitted to be distributed in accordance with clause 10.4 of the Amended and Restated Terms of Project Funding Deed for that Quarter.

BBSY means the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page BBSY on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by RTA at or about 10:15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

Borrower means the Trustee.

Company Road means that part of the Project being undertaken in the area described as such in Schedule 7.

Cost Payment Schedule means Schedule 6.

CPI has the meaning given in the M2 Motorway Project Deed.

D&C Contract means the M2 Motorway Upgrade Design and Construct Deed between Hills Motorway and the Contractor dated on or about the date of this Deed.

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

Default Step-In Notice means a notice given under clause 9.3(a)(iii).

Default Step-In Rights means the step-in rights set out in clause 9.4(a).

Deferred Interest Rate means 10.81% per annum (or 2.59938% per Quarter).

Early Termination Amount on any date:

- (a) is the total of:
 - (i) the M2 Upgrade Project Debt on that date; and
 - (ii) an amount sufficient to give the Company and the Trustee in aggregate the ability to give the M2 Upgrade Equity Investors (treated as if those M2 Upgrade Equity Investors were all Notional Initial M2 Upgrade Equity Investors) a nominal after tax internal rate of return (which, for the avoidance of doubt, excludes any tax paid or payable by the M2 Upgrade Equity Investors) to that date equal to the M2 Upgrade Equity Return (having regard to amounts the Company and the Trustee have previously paid and received and the amounts that the Company and the Trustee must, subject to clause 8.8(f) of Annexure A, pay as a consequence of the termination, including to their respective contractors excluding however any amount payable to the Contractor which relates to any amount payable by the Contractor to any Related Entity of the Contractor other than where the Related Entity is engaged on an arm's length basis and on commercial terms); and
- (b) does not include any interest on the M2 Upgrade Project Debt to the extent that it is calculated at a rate which would constitute a penalty.

Event of Default means any event specified as such in clause 9.1.

Event of Insolvency means, in relation to a company, any of the following events:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller (as defined for the purposes of section 9 of the Corporations Act) or similar officer is appointed in respect of the company or any asset of the company;
- (b) a liquidator or provisional liquidator is appointed in respect of the company;

- (c) any application (not being an application withdrawn or dismissed within 10 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up the company; or
 - (iii) proposing or implementing a scheme of arrangement in respect of the company;
- (d) a moratorium of any debts of the company or an official assignment or a composition or an arrangement (formal or informal) with the company's creditors or any similar proceeding or arrangement by which the assets of the company are subjected conditionally or unconditionally to the control of the company's creditors is ordered, declared or agreed to, or is applied for (and, in the case of an application, the application is not withdrawn or dismissed within 10 Business Days);
- (e) the company becomes, admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the company and is not withdrawn within 10 Business Days; or
- (g) any act is done or event occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) - (f).

Existing Operations means all of the obligations of Hills Motorway under the M2 Motorway Project Deed.

Financiers means:

- (a) each of the Participants, the Security Trustee, the Agent and each Hedge Counterparty (each as defined in the Amended and Restated Terms of Project Funding Deed); and
- (b) each other person who provides finance to the Borrower pursuant to any document entered into by the Borrower in respect of:
 - (i) any modification, variation or amendment to any M2 Upgrade Debt Financing Document;
 - (ii) the exercise of any right, or the request for or grant of any waiver or consent, under any M2 Upgrade Debt Financing Document;
 - (iii) any other step that has a substantially similar effect to the actions referred to in paragraphs (b)(i) or (ii); or
 - (iv) any new contractual financing arrangements (including any new financing arrangements).

GST, GST law and other terms used in clause 7.2 and the Toll Calculation Schedule have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 7.2) includes any GST payable by the representative member of any GST group of which the Supplier is a member. Any reference to an Input Tax Credit to which a Party is entitled includes an Input Tax Credit for an acquisition made by that Party but to which the representative member of any GST group of which the Party is a member is entitled.

Hills Motorway Group means each of the Company, the Trustee, the Hills Motorway Trust and Hills Motorway Construction Company Pty Ltd (ABN 53 066 036 495).

Hills Reinstatement Plan has the meaning given to that term in clause 9.6B(c).

IAMA means The Institute of Arbitrators and Mediators Australia.

Indirect Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of any business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production, loss of value of the M2 Motorway, or any failure to realise anticipated savings, reduced costs or other benefits, where that loss or failure is special, indirect or consequential.

Interest Costs has the meaning given in the Amended and Restated Terms of Project Funding Deed.

Issuer has the meaning given to that term in the Amended and Restated Terms of Project Funding Deed.

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 Company, indexed by increases in the CPI between the end of the 12 month period and the Anticipated RTA Completion Date.

Net Project Cash Flow has the meaning given in the Amended and Restated Terms of Project Funding Deed.

New Mortgage has the meaning given to that term in the RTA Upgrade Consent Deed.

Participant has the meaning given to that term in the Amended and Restated Terms of Project Funding Deed.

Project Assets means all assets associated with the M2 Upgrade including:

- (a) the Project Works and the Temporary Works;
- (b) the Design Documentation;
- (c) the Subsidiary D&C Programs;
- (d) quality assurance plans and other documents;
- (e) Hills Motorway's rights under the Project Documents; and
- (f) residual rights under insurances required under this Deed.

Quarter means each 3 month period ending on 31 March, 30 June, 30 September and 31 December in each year.

Quarterly Instalment means, in respect of any Quarter after the Construction Completion of Stage 3 has occurred:

- (a) in which there are RTA Default Step-In Costs owing to RTA which have not been paid by the Company, the lesser of:
 - (i) the amount of the instalment for that Quarter calculated in accordance with the Cost Payment Schedule; and
 - (ii) the RTA Default Step-In Costs which are owing to RTA at the relevant time; or
- (b) in which there are no RTA Default Step-In Costs owed to RTA, zero.

Quarterly Payment Date means, in respect of a Quarter, the date which is 30 days after the end of that Quarter.

Reinstatement Plan means a Hills Reinstatement Plan or a RTA Reinstatement Plan.

Repeated Event of Default has the meaning given to that term in clause 9.4(j).

Required Level means in circumstances where:

- (a) RTA is exercising its Default Step-In Rights and Construction Completion of Stage 3 has not yet occurred, an amount of money equal to the Quarterly Instalments to be paid to RTA (as set out in the Cost Payment Schedule) for the 12 month period following the Anticipated RTA Completion Date; and
- (b) RTA has exercised Default Step-in Rights and Construction Completion of Stage 3 has occurred, an amount of money equal to the Quarterly Instalments to be paid to RTA (as set out in the Cost Payment Schedule) for the 12 month period following the relevant SCR Date.

RTA Completion Notice has the meaning given in clause 9.5A(b).

RTA Default Step-In Costs has the meaning given in clause 9.5(a).

RTA Reinstatement Plan has the meaning given to that term in clause 9.6B(c).

Satisfaction Date means the day on which all of the conditions precedent in clause 3.1 have been satisfied or waived, as confirmed in writing by each Party to the other.

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 9.5A(c).

Security Trustee means National Australia Bank Limited ABN 12 004 044 937.

Side Deed means the deed so entitled between the Company, the Trustee, RTA, the Contractor and the Contractor Guarantor dated on or about the date of this Deed.

Step-In Costs Reserve Account means the account styled "M2 Motorway - Step-In Costs Reserve Account" established by the Company in accordance with clause 9.5A.

Step-Out Date has the meaning given in clause 9.4(i)(ii).

Step-Out Notice means a notice given under clause 9.4(h).

Termination Notice means a notice given under clause 9.3(a)(iv).

Toll Calculation Schedule has the meaning given to that term in the M2 Motorway Project Deed.

Trust Road means that part of the Project being undertaken in the area described as such in Schedule 7.

Unpaid Quarterly Instalment means any Quarterly Instalment (or part thereof) which should (but for the operation of clause 9.5(e)) have been paid by the Company on a previous Quarterly Payment Date, but which has not yet been paid.

1.2 Ambiguous terms

Subject to clause 1.8:

- (a) if:
 - (i) Hills Motorway becomes aware of any ambiguity, discrepancy or inconsistency within any document referred to, or included, in this Deed (including in any Schedules, Annexures or Exhibits), or between any two or more documents referred to, or included, in this Deed (including any Schedules, Annexures or Exhibits) Hills Motorway must promptly notify RTA's Representative in writing providing details of the ambiguity, discrepancy or inconsistency; and
 - (ii) RTA's Representative considers, or Hills Motorway notifies RTA's Representative in writing it considers, that there is an ambiguity, discrepancy or inconsistency in the Deed (including in any Schedules, Annexures or Exhibits), RTA's Representative may direct the interpretation of this Deed which Hills Motorway must follow;
- (b) RTA's Representative, in giving a direction in accordance with clause 1.2(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this Deed;
- (c) any direction which RTA's Representative gives in accordance with clause 1.2(a)(ii):
 - (i) must be in accordance with the order of precedence in clause 1.8;
 - (ii) does not in any way lessen or otherwise affect:
 - A. Hills Motorway's obligations under this Deed or otherwise at law; and

- B. RTA's rights against Hills Motorway, whether under this Deed or otherwise according to law; and
- (iii) must, in respect of a notice given by Hills Motorway under clause 1.2(a), be given within 28 days of receipt of that notice; and
- (d) no notice given by RTA's Representative under clause 1.2(a) which complies with clause 1.2(c)(i) will constitute a Change or otherwise entitle Hills Motorway to make any Claim against RTA arising out of or in any way in connection with the notice.

1.3 Interpretation

In this Deed unless the context indicates a contrary intention:

- (a) the expression person includes an individual, body politic, a corporation, a statutory or other authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) the expressions including, includes and include have the meaning as if followed by without limitation;
- (c) a reference to any Party includes that Party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
- (d) a reference 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 to 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 that organisation which serves substantially the same purpose or object as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument includes, respectively, this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
- (g) subject to clause 2.3, a reference in this Deed to any act or omission of RTA includes any demand, determination, direction, instruction, order, rejection, request or requirement made or given by RTA;

- (h) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (i) headings are for convenience only and do not affect the interpretation of this Deed;
- (j) a reference to a clause, Schedule, Annexure or Exhibit is a reference to a clause, Schedule, Annexure or Exhibit of or to this Deed;
- (k) a reference to this Deed or any other Project Document includes all schedules, annexures or exhibits to this Deed or the Project Document;
- (l) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (m) a reference to a court or tribunal is to an Australian court or tribunal;
- (n) a reference to a day, month or year is a reference to a calendar day, a calendar month or a calendar year respectively;
- (o) a reference to \$ or dollar is to Australian currency;
- (p) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually;
- (q) a reference in this Deed or in the Environmental Documents to:
 - (i) the Project Environment Plan, or PEMP;
 - (ii) the Construction Environmental Management Plan, or CEMP;
 - (iii) the Environmental Management Plan (Construction Stage), or EMP (Construction Stage);
 - (iv) the environmental management plan, EMP or EMP(s); and
 - (v) any other form of letters or words indicating an intention to refer to a plan relating to environmental management,will be read as a reference to the Environmental Management Plans;
- (r) clause 1.8A of the M2 Motorway Project Deed applies to this Deed as if set out in full; and
- (s) for the avoidance of doubt, the Environmental Representative will perform the role and functions of the Environmental Representative or the ER under the Project Approval and this Deed, but all references to the Environmental Representative or ER in all other Environmental Documents and in the documents referred to in the documentation comprising the Project Approval or in the Environmental Documents, means the Environmental Manager.

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 put forward or drafted this Deed or any provision in it.

1.5 Joint and several liability

- (a) The obligations and liabilities of Hills Motorway under this Deed are several and not joint and several and the Parties acknowledge and agree that, notwithstanding anything else in this Deed, the Trustee is only responsible for its own acts and omissions (including breaches of this Deed).
- (b) The Company unconditionally and irrevocably guarantees to RTA the performance by the Trustee of its obligations under the Project Documents.
- (c) As a covenant separate and distinct from that contained in clause 1.5(b), the Company irrevocably and unconditionally agrees to indemnify RTA and at all times keep RTA indemnified against any loss or damage suffered by RTA arising out of or in connection with any failure by the Trustee to perform its obligations under the Project Documents.
- (d) The guarantee on the part of the Company in clause 1.5(b) may not be revoked or released until all obligations on the part of the Trustee have been performed in full and will not be taken to be wholly or partially discharged by any matter or thing and will remain in full force until the Trustee has completely performed its obligations under the Project Documents.
- (e) Neither the Project Documents nor the obligations of the Company or the Trustee under the Project Documents will be affected by anything which, but for this clause 1.5, might operate to release, prejudicially affect or discharge them or in any way relieve them from any obligation imposed on either of them under the Project Documents.

1.6 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.

1.7 Certification

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

1.8 Order of precedence

- (a) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Deed:

- (i) this Deed, excluding Annexure A and the Exhibits;
 - (ii) Annexure A, excluding the Schedules to Annexure A;
 - (iii) Appendix 5 to the Scope of Works and Technical Criteria;
 - (iv) the Environmental Documents; and
 - (v) the remaining Exhibits to this Deed and the Schedules to Annexure A.
- (b) *Not used*
- (c) The Scope of Works and Technical Criteria and the Environmental Documents are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in both.
- (d) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency within the Scope of Works and Technical Criteria or the Environmental Documents or between the Scope of Works and Technical Criteria and the Environmental Documents:
- (i) Appendix 5 to the Scope of Works and Technical Criteria; and
 - (ii) otherwise, the part of the Scope of Works and Technical Criteria or the Environmental Documents which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence.
- (e) The Parties acknowledge and agree that nothing in Appendix 5 to the Scope of Works and Technical Criteria prevents the Project Works satisfying any requirement under this Deed or Annexure A regarding fitness for purpose.

1.9 Hills Motorway

Without limiting clause 1.5:

- (a) a reference to Hills Motorway is, without limiting clause 1.9(c), a reference to:
- (i) in relation to the Company Road, the Company;
 - (ii) in relation to the Trust Road, the Trustee; and
 - (iii) in relation to the operation, maintenance, repair and tolling of the M2 Motorway, the Company;
- (b) as an example, where in clauses 2.1 and 2.2 this Deed provides that Hills Motorway must design and construct the Project Works and accepts risks associated with the Project, this means that:
- (i) the Company must design and construct the Company Road and accepts the risks associated with the Company Road;
 - (ii) the Trustee must design and construct the Trust Road and accepts the risks associated with the Trust Road; and

- (iii) the Company guarantees to RTA the performance of the Trustee's obligations in accordance with clause 1.5;
- (c) if, and to the extent that this Deed:
- (i) is silent on;
 - (ii) does not clearly allocate; or
 - (iii) contains any ambiguity in relation to,
- either of:
- (iv) whether an obligation under this Deed is an obligation of the Company or the Trustee; or
 - (v) liability for a particular risk under this Deed,
- then as between the Company and the Trustee, that obligation or liability will be borne by the Company.

1.10 Equity Return

For the purposes of calculating:

- (a) whether the Company and Trustee have received an amount sufficient to give Investors (treated as if those Investors were all Notional Initial M2 Upgrade Equity Investors) a particular internal rate of return;
- (b) the amount necessary to enable the Company and the Trustee to give Investors (treated as if those Investors were all Notional Initial M2 Upgrade Equity Investors) a particular internal rate of return; and
- (c) M2 Upgrade Equity Return,

the Advance Contribution (which was used by the Company and Trustee to fund costs relating to the Project before the Satisfaction Date rather than for the purposes of making distributions) will not be counted as an investment by Notional Initial M2 Upgrade Equity Investors or a distribution to them.

2. Relationship of RTA and Hills Motorway

2.1 Fundamental obligations

Hills Motorway must investigate, design and construct the Project Works and the Temporary Works in accordance with this Deed.

2.2 Project risk

Except as otherwise expressly provided in this Deed or the M2 Motorway Project Deed, Hills Motorway accepts all risks associated with the Project, including:

- (a) all risks associated with the costs of design and construction of the Project Works and the Temporary Works;

- (b) all risks associated with the actual costs incurred by Hills Motorway in carrying out the Project exceeding the costs estimated to be incurred by Hills Motorway in carrying out the Project;
- (c) all risks associated with any liability for Taxes being greater than estimated by Hills Motorway or its advisers; and
- (d) all risks associated with the costs of damages, expenses, losses, liabilities or delays which it incurs or suffers arising out of or in any way in connection with the performance of its obligations under this Deed.

2.3 RTA as an Authority

- (a) Subject to clause 2.3(b), each of the Company and the Trustee acknowledges and agrees that:
 - (i) nothing in this Deed or in any of the Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RTA to exercise any of its functions and powers pursuant to any legislation; and
 - (ii) without limiting clause 2.3(a)(i), anything which RTA does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by RTA under this Deed and will not entitle the Company or the Trustee to make any Claim against RTA arising out of the subject matter of this Deed and the other Project Documents to which RTA is a party.
- (b) RTA and Hills Motorway agree that clause 2.3(a) is taken not to limit any liability which RTA would have had to Hills Motorway under this Deed, or any other Project Document to which RTA is a party, as a result of a breach by RTA of a term of this Deed or any other Project Document to which RTA is a party but for clause 2.3(a).

2.4 Other Authorities

Each of the Company and the Trustee acknowledges and agrees that:

- (a) there are Authorities (other than RTA) with jurisdiction over aspects of Hills Motorway's Work and parts of the Project Site and areas affected by Hills Motorway's Work;
- (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 Hills Motorway's Work; and
- (c) except as otherwise provided in this Deed (other than those provisions relating to construction obligations) or the M2 Motorway Project Deed, it bears the full risk of all occurrences of the kind referred to in clause 2.4(b) and will not be entitled to make any Claim against RTA arising out of or in any way in connection with such occurrences.

Without limiting clauses 2.4(a), 2.4(b) or 2.4(c), if requested in writing by Hills Motorway, RTA will cooperate with, and (at the Hills Motorway's cost) provide reasonable assistance to,

Hills Motorway in obtaining Approvals in respect of Services necessary to carry out Hills Motorway's Work.

2.5 No partnership, joint venture or other fiduciary relationship

Neither this Deed nor any other Project Document to which RTA and the Company or the Trustee are expressed to be parties creates a partnership, joint venture or fiduciary relationship between RTA and the Company or RTA and the Trustee.

2.6 RTA action

- (a) If:
- (i) Hills Motorway fails to perform an obligation under this Deed; and
 - (ii) Hills Motorway has not, within a reasonable time after the date of receipt of a written notice from RTA 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,

then RTA may take such action as may be necessary to remedy the failure by Hills Motorway and RTA may for this purpose enter the Project Site, the Temporary Areas, any Extra Land and any other land upon which Hills Motorway's Work is being carried out. RTA must give reasonable notice to Hills Motorway of its intention to cease taking such action, and must cease taking such action as soon as the failure has been remedied.

- (b) Any Loss suffered or incurred by RTA in taking action under this clause 2.6 will be a debt due and payable from Hills Motorway to RTA, provided that:
- (i) if RTA has exercised its Default Step-In Rights in connection with a failure by Hills Motorway to perform an obligation; or
 - (ii) to the extent RTA is or was entitled to exercise its Default Step-In Rights in connection with the failure and takes action under this clause,

RTA's rights in connection with Loss suffered or incurred in the exercise of its Default Step-In Rights are limited to its right to repayment of any RTA Default Step-In Costs by the Company in accordance with clause 9.5.

2.7 Indemnities

- (a) Where under the terms of this Deed:
- (i) the Company or the Trustee indemnifies RTA from and against any Claim or Loss, the Company's or the Trustee's liability (as applicable) to indemnify RTA will be reduced to the extent that any breach of this Deed or the other Project Documents to which RTA is a party or other act or omission (including any negligence) of RTA, including an act or omission (including any negligence) of its employees, agents or contractors (other than the Company and the Trustee), contributed to the Claim or Loss;

- (ii) RTA indemnifies the Company and/or the Trustee from and against any Claim or Loss suffered by the Company and/or the Trustee (as applicable), RTA's liability to indemnify either of the Company and/or the Trustee (as applicable) will be reduced to the extent that any breach of this Deed or the other Project Documents to which RTA is a party or other act or omission (including any negligence) of either of the Company or the Trustee, including an act or omission (including any negligence) of their employees, agents or contractors, contributed to the Claim or Loss; and
- (iii) a Party is obligated to pay an amount in respect of any Loss suffered or incurred by the other Party, it excludes Loss as a result of the negligence or wilful default of the payee Party, its employees or agents.
- (b) Clauses 2.7(a)(i) and 2.7(a)(iii) will not apply to reduce the Company or the Trustee's liability to indemnify or pay RTA to the extent that RTA is held to be vicariously liable at Law for any acts or omissions of either of the Company or the Trustee or their employees, agents or contractors.
- (c) Clause 2.7(a)(i) will not apply to reduce the Company's or the Trustee's liability to indemnify RTA to the extent that the act or omission of RTA is an act or omission in the exercise of its rights or powers under this Deed.

3. Conditions precedent

3.1 Conditions precedent to obligations of the Parties

The rights and obligations of the Parties under this Deed, other than this clause 3 and clause 4 of Annexure A, are subject to the satisfaction or waiver of the following conditions precedent:

- (a) execution of the M2 Upgrade Debt Financing Documents (other than each New Mortgage) by all parties to them all in a form satisfactory to RTA and satisfaction of all conditions precedent to such documents (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this Deed);
- (b) satisfaction of all conditions referred to in clause 4 of the agreement by letter entitled "*Consolidation of M2 Motorway project documents project*" dated on or prior to the date of this Deed;
- (c) satisfaction of all conditions precedent to the 2010 Amending Deed;
- (d) execution of all other Project Documents by all parties to them all in a form satisfactory to RTA and satisfaction of all conditions precedent to such documents (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this Deed);
- (e) all other necessary Ministerial consents and approvals, including consent and approval under section 20 of the PAFA Act, having been obtained;
- (f) the M2 Upgrade Base Case Financial Model has been agreed and audited by an independent auditor acceptable to RTA;

- (g) the insurance policies required by clause 15.4 of Annexure A being effected in the form of the wording set out in Exhibit D or as otherwise agreed by the Parties and a certified copy of these insurance policies being provided to RTA;
- (h) the guarantee made pursuant to section 22B of the PAFA Act in respect of RTA's obligations under the M2 Motorway Project Deed is restated to include RTA's obligations under this Deed, the RTA Upgrade Consent Deed, the Leases, the Side Deed, the 2010 Amending Deed and the M2 Motorway Project Deed as amended pursuant to this Deed;
- (i) if:
 - (i) the Company or the Trustee requires FIRB approval to enter into this Deed, the Company or the Trustee (as relevant) has provided evidence satisfactory to RTA that the Company or the Trustee (as relevant) has FIRB approval to enter into this Deed; or
 - (ii) the Company or the Trustee does not require FIRB approval to enter into this Deed, the Company or the Trustee (as relevant) has provided evidence satisfactory to RTA that the Company or the Trustee (as relevant) does not require FIRB approval to enter into this Deed;
- (j) each of RTA and Hills Motorway has received evidence in form and substance satisfactory to it that the Agent has consented to this Deed;
- (k) execution of the Equity Subscription Deed by all parties to it in a form satisfactory to RTA and satisfaction of all conditions precedent to the Equity Subscription Deed (other than any condition precedent which requires the satisfaction or waiver of the conditions precedent to this Deed); and
- (l) RTA and Hills Motorway have agreed in writing the amount of the Advance Contribution, being the amount of costs that have been incurred by Hills Motorway in connection with the Project up to the Satisfaction Date.

3.2 Notification, waiver and satisfaction

- (a) Each Party must use all reasonable endeavours to satisfy the conditions precedent. The Parties must notify each other as and when a condition precedent has been satisfied.
- (b) The Parties may waive the conditions precedent as follows:
 - (i) RTA may waive in writing any of the conditions precedent referred to in clauses 3.1(d), (f), or (g);
 - (ii) Hills Motorway may waive in writing any of the conditions precedent referred to in clause 3.1(h); and
 - (iii) RTA and Hills Motorway may jointly waive in writing any of the conditions precedent referred to in clause 3.1(a), (b), (c), (e), (i), (j), (k).
- (c) Upon satisfaction or waiver of all conditions precedent in clause 3.1, Hills Motorway must notify each of the other parties to the Project Documents of the Satisfaction Date.

- (d) Should any of the conditions precedent referred to in clause 3.1(a), (b), (c), (d), (f), (g), (i), (j) or (k) not be satisfied or waived within 3 months of the date of this Deed (or such other period as is agreed by the Parties), then RTA may rescind this Deed by notice in writing to Hills Motorway.
- (e) Should any of the conditions precedent referred to in clause 3.1(e) or 3.1(j) not be satisfied or waived within 3 months of the date of this Deed (or such other period as is agreed by the Parties), then Hills Motorway may rescind this Deed by notice in writing to RTA.
- (f) If this Deed is rescinded pursuant to clause 3.2(d) or clause 3.2(e), neither Party will have any obligations to any other Party arising on or out of such rescission or otherwise out of this Deed, except in relation to breaches arising prior to such rescission.

4. Existing M2 Motorway

- (a) Except as otherwise expressly provided in this Deed, nothing in this Deed limits Hills Motorway's obligations in respect of the Existing Operations.
- (b) Without limiting the other obligations of Hills Motorway, Hills Motorway must ensure that, in carrying out and completing the Project Works and the Temporary Works, the Project Works properly interface and integrate with, and connect to, the physical infrastructure comprised in the Existing Operations so as to enable the M2 Upgrade to comply with the requirements of the M2 Motorway Project Deed as amended pursuant to this Deed.

5. Design, construction, commissioning and completion

5.1 Annexure A

- (a) Hills Motorway must design, construct, commission and complete the M2 Upgrade in accordance with Annexure A.
- (b) RTA agrees to comply with its obligations under Annexure A.

5.2 Consent

The State and RTA consent to Hills Motorway undertaking the M2 Upgrade in accordance with the Project Documents.

5.3 Opening of the M2 Upgrade

- (a) Subject to clause 5.3(d), no individual Stage of the M2 Upgrade may be opened for public use prior to the Date of Construction Completion of that Stage (except to the extent necessary to enable Hills Motorway to carry out temporary traffic staging in accordance with the requirements of this Deed).
- (b) Subject to clause 5.3(d), as soon as practicable after the Date of Construction Completion of a Stage which includes a traffic lane or part of a traffic lane, the Company must open the relevant traffic lane or part of a traffic lane of the M2 Upgrade comprised in that Stage to the public for the safe, efficient and continuous passage of vehicles.

- (c) The Company must:
 - (i) give notice to RTA's Representative of its intention to open a traffic lane or part of a traffic lane of the M2 Upgrade for public use at least 20 Business Days (or such lesser period as may be agreed between RTA and the Company) prior to the traffic lane or the part of a traffic lane being so opened; and
 - (ii) provide evidence in writing to the reasonable satisfaction of RTA that all insurances required in relation to the M2 Upgrade under clause 15 of Annexure A and the M2 Motorway Project Deed have been effected and remain in place prior to opening any part of the M2 Upgrade for public use.
- (d) Notwithstanding any other provision in this Deed, if at any time RTA's Representative gives Hills Motorway a written notice that, in RTA's reasonable opinion, a traffic lane of a section of the M2 Upgrade is able to be used by the public for the safe, efficient and continuous passage of vehicles, the Company must:
 - (i) provide evidence in writing satisfactory to RTA that all insurances required in relation to the M2 Upgrade under clause 15 of Annexure A and the M2 Motorway Project Deed have been effected and remain in place; and
 - (ii) after such evidence has been provided, open the traffic lane to the public.
- (e) Any opening and/or use of a traffic lane of the M2 Upgrade under this clause 5.3 prior to Construction Completion of the relevant Stage of which the traffic lane forms part will not relieve Hills Motorway from any of its responsibilities, obligations or liabilities under this Deed (other than its obligations under clauses 5.3(a) and, where clause 5.3(d) applies, clause 5.3(c)(i)).

5.4 Construction Completion of each Stage

The Parties acknowledge and agree that, without limiting clause 10.3 of Annexure A:

- (a) subject to clauses 5.4(b) and 5.4(c), upon and from:
 - (i) the achievement of Construction Completion of a Stage until the expiry of the final Defects Correction Period in connection with that Stage, the ongoing rights and obligations of the Parties in connection with that Stage will be those set out in clauses 2 and 11 of Annexure A and those set out in the M2 Motorway Project Deed (as varied by this Deed); and
 - (ii) the expiry of the final Defects Correction Period in connection with a Stage, the ongoing rights and obligations of the Parties in connection with that Stage will be those set out in the M2 Motorway Project Deed (as varied by this Deed);
- (b) after a Stage has achieved Construction Completion but prior to the expiry of the final Defects Correction Period in connection with that Stage, any Hills Motorway's Work which is (or is required to be) undertaken by Hills Motorway which this Deed requires Hills Motorway to carry out:

- (i) on or in connection with that Stage; or
 - (ii) on that Stage in connection with any other Stage,
must be carried out in accordance with this Deed; and
- (c) nothing in this clause 5.4 limits:
- (i) clauses 2, 4, 7.2, 8, 9, 10, 11, 13, 14, 16.3, 16.4, 16.7, 16.8, 16.12, 16.14, 16.16 and 16.17 of this Deed;
 - (ii) clauses 4.2, 4.3, 5.1 to 5.3 (inclusive), 5.10, 5.23, 5.26, 8.11, 9.4, 10.3, 12, 15.2, 15.3 and 16 of Annexure A; or
 - (iii) any rights or obligations of either Party in connection with:
 - A. a Stage that have accrued prior to that Stage achieving Construction Completion; and
 - B. any failure by the Company or the Trustee to comply with their obligations referred to in clause 5.4(b).

6. Amendments to the M2 Motorway Project Deed

6.1 M2 Motorway Project Deed in full force

The Parties agree that each provision of the M2 Motorway Project Deed remains in full force and effect in accordance with its terms, except to the extent expressly varied pursuant to this Deed.

6.2 Amendments which take effect from the Satisfaction Date

Each Party agrees that, with effect from the Satisfaction Date, the M2 Motorway Project Deed and the exhibits to it are varied in the manner outlined in Schedule 1.

6.3 Amendments which take effect from the Date of Construction Completion of Stage 1

Each Party agrees that, with effect from the Date of Construction Completion of Stage 1, Exhibit K to the M2 Motorway Project Deed is amended and restated as set out in Annexure M.

6.4 Amendments which take effect from the Date of Final Completion

Each Party agrees that, with effect from the Date of Final Completion, the M2 Motorway Project Deed and the exhibits to it are varied in the manner outlined in Schedule 3.

6A. Tollway declaration

Prior to the Date of Construction Completion of the first Stage to achieve Construction Completion, the Minister must:

- (a) declare the M2 Upgrade to be a tollway under section 52 of the *Roads Act 1993* (NSW); and

- (b) direct that the functions of any road authority in respect of the M2 Upgrade are the responsibility of RTA.

7. Rates, Taxes and GST

7.1 Rates and Taxes

The Parties agree that, subject to the express provisions of this Deed, clauses 17.5 and 17.6 of the M2 Motorway Project Deed are taken to be incorporated in this Deed as if set out in full.

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 to which that Party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a Party (**Supplier**) under or in connection with this Deed:
- (i) any amount payable or consideration to be provided under any other provision of this Deed for that supply (**Agreed Amount**) is exclusive of GST;
 - (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) 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 Chartered Accountants 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.

8. Confidentiality and publicity

8.1 General restriction

Subject to clause 8.2, no Party will, at any time, without the written consent of the other Party, divulge or suffer or permit its servants, consultants or agents to divulge to any person (other than to the Contractor, the Independent Verifier 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 Project Documents;
- (b) any information relating to the negotiations concerning the same; or
- (c) any information which may have come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other Party.

8.2 Exceptions

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

- (a) which is now or hereafter comes into the public domain or which is obtainable with no more than reasonable diligence from sources other than the Parties;
- (b) which is required to be disclosed by law or the Listing Rules of the Australian Stock Exchange Limited (if applicable);
- (c) as required for any legitimate Government purpose or process;
- (d) pursuant to the contract summary required to be published in accordance with Premier's Memorandum No. 2007-01 dated 8 January 2007, the New South Wales Government Working with Government Guidelines for Privately Financed Projects December 2006;
- (e) to a court, arbitrator or administrative tribunal in the course of proceedings before it or him to which the disclosing Party is a party or to an expert in the course of any determination by him to which the disclosing Party is a party;
- (f) which, in the reasonable opinion of the Company, the Trustee or RTA (as the case may be), is required to be disclosed to:
 - (i) any actual or prospective investor in or lender to (or assignee or novatee of a lender to) the Company or the Trustee;
 - (ii) any insurer in respect of the M2 Upgrade;
 - (iii) any of the Company's, the Trustee's or RTA's officers, employees, professional advisers, auditors and consultants; or

- (iv) any person to whom disclosure is reasonably necessary to enable that person to comply with the Project Documents to which it is a party; or
- (g) by the Company to the Trustee, or the Trustee to the Company.

8.3 Publicity

- (a) Hills Motorway must not:
 - (i) announce, promote or hold any event, function or party on the Project Site or the Temporary Areas (or permit any third party to do so) without the prior written approval of RTA (acting reasonably); or
 - (ii) issue any information, publication, document or article for publication concerning the Project Works or the Temporary Works in any media without prior written approval of RTA (acting reasonably) and only in a manner approved by RTA's Representative (acting reasonably).
- (b) If any of Hills Motorway, the Contractor or any of their Subcontractors receives a direct request from the media for comment in respect of any aspect of the Project Works or the Temporary Works, it must promptly provide details of such request to RTA's Representative.

9. Default and termination

9.1 Event of Default

Each of the following events is an Event of Default:

- (a) either entity constituting Hills Motorway fails to commence, or to expeditiously and diligently progress Hills Motorway's Work as required by clause 9.1 of Annexure A or displays an intention to permanently abandon the Project;
- (b) the Company fails in a material respect to insure the M2 Upgrade in accordance with its obligations under Annexure A and the M2 Motorway Project Deed;
- (c) either entity constituting Hills Motorway defaults in a material respect in the due observance and performance of any of its other obligations under this Deed or any other Project Document to which RTA is a party;
- (d) an Event of Insolvency occurs in relation to either entity constituting Hills Motorway, whether or not that entity is then in breach of this Deed; or
- (e) a representation or warranty given by either entity constituting Hills Motorway under this Deed is breached in a material respect.

9.2 Notice of default

- (a) Upon the occurrence of an Event of Default, RTA may, by notice in writing to Hills Motorway, require Hills Motorway to remedy the Event of Default (or overcome its effects) within, subject to clause 9.2(b), such period specified in the notice (not exceeding 40 Business Days) as in the opinion of RTA is reasonably required to remedy the Event of Default (or overcome its effects).
- (b) The Parties agree that:
- (i) if an Event of Default is a failure to pay money, a reasonable time to remedy that Event of Default is 10 Business Days; and
 - (ii) if an Event of Default is:
 - A. a failure to commence Hills Motorway's Work as required by clause 9.1 of Annexure A; or
 - B. either entity constituting Hills Motorway displaying an intention to permanently abandon the Project,
- Hills Motorway must give the program referred to in clause 9.2(c)(ii) to RTA within 10 Business Days after receipt of a notice from RTA under clause 9.2(a) and a reasonable time to remedy that Event of Default is a period of no longer than that permitted under clause 9.2(g).
- (c) If RTA gives Hills Motorway a notice referred to in clause 9.2(a):
- (i) Hills Motorway must comply with the notice; and
 - (ii) unless the relevant Event of Default is a failure to pay money:
 - A. Hills Motorway must give RTA a program to remedy the Event of Default (or overcome its effects) in accordance with the terms of RTA's notice;
 - B. RTA must consult with Hills Motorway in good faith to develop and settle that program; and
 - C. Hills Motorway must thereafter comply with that program.
- (d) Subject to clause 9.2(g), if, at any time (even if Hills Motorway has previously given RTA a notice under clause 9.2(d)(i)), Hills Motorway considers, in good faith, that the time specified in a notice given by RTA under clause 9.2(a) is not reasonable:
- (i) Hills Motorway must immediately give RTA written notice of that fact, including details of its reasons and the period of time which it believes is reasonably required to remedy the Event of Default (or overcome its effects); and
 - (ii) subject to clause 9.2(e), RTA must, as soon as practicable after receiving a notice under clause 9.2(d)(i), review the time specified in the notice under clause 9.2(a).

- (e) Subject to clause 9.2(g), if Hills Motorway gives a notice to RTA under clause 9.2(d) and:
 - (i) Hills Motorway is diligently pursuing a program to remedy the Event of Default (or to overcome its effects); and
 - (ii) the M2 Motorway is open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 8.4 of Annexure A or the M2 Motorway Project Deed),

the time specified in the notice given by RTA under clause 9.2(a) will be extended by such period which is reasonably required to remedy the Event of Default (or overcome its effects), which extensions will not exceed 21 months in the aggregate in respect of that Event of Default, as notified by RTA to Hills Motorway in writing.
- (f) Subject to clause 9.2(g), if Hills Motorway considers in good faith that the period specified in the notice given by RTA under clause 9.2(e) is not reasonable, it may refer the matter to expert determination in accordance with clause 11. The Parties acknowledge and agree that the expert or arbitrator (if applicable) is not entitled to determine that the reasonable period referred to in clause 9.2(e) will exceed 21 months in the aggregate in respect of the relevant Event of Default.
- (g) If the relevant Event of Default is an Event of Default referred to in clause 9.2(b)(ii), this clause 9.2 applies except that Hills Motorway will not be entitled to give RTA a notice under clause 9.2(d) or (e) seeking an extension or otherwise seek or be granted an extension to the time specified in the notice given by RTA under clause 9.2(a) which exceeds 6 months in the aggregate after the date of receipt of RTA's notice under clause 9.2(a).

9.3 Notice by RTA

- (a) If the Event of Default is not remedied (or its effects overcome) within the period specified in the notice given pursuant to clause 9.2(a) (as extended if at all in accordance with clause 9.2(e), clause 9.2(f) or clause 9.2(g)) or if at any time during that period:
 - (i) Hills Motorway is not diligently pursuing a program to remedy the Event of Default (or to overcome its effects); or
 - (ii) the M2 Motorway is not open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 8.4 of Annexure A or the M2 Motorway Project Deed),

RTA may give Hills Motorway 20 Business Days' written notice of its intention to:

 - (iii) exercise its Default Step-In Rights in accordance with clause 9.4; or
 - (iv) terminate this Deed in accordance with clause 9.8,

and during that 20 Business Day period Hills Motorway will have a right to remedy the Event of Default (or overcome its effects).
- (b) Nothing in this Deed requires RTA to:

- (i) exercise its Default Step-In Rights;
- (ii) otherwise remedy or cure any breach by Hills Motorway; or
- (iii) without limiting clause 2.7, mitigate any risk, or the consequences or potential consequences of any risk, which might entitle RTA to exercise its Default Step-In Rights.

9.4 Default Step-In by RTA

- (a) If, at the expiration of the 20 Business Day period following the issue of a Default Step-In Notice, the Event of Default has not been remedied (or its effects overcome), RTA is entitled to (but is not obliged to) in its absolute discretion:
 - (i) assume total possession, management and control of the M2 Upgrade, the Project Works, the Temporary Works and the performance of Hills Motorway's Work (**Total Step-In**);
 - (ii) assume partial possession, management and control of the M2 Upgrade, the Project Works, the Temporary Works and the performance of Hills Motorway's Work (**Partial Step-In**); or
 - (iii) otherwise take such other steps as it determines are necessary or desirable to continue the performance of Hills Motorway's Work, including any steps to minimise the risk to the health and safety of persons, the Environment, the M2 Upgrade, any property or the safe and secure performance of Hills Motorway's Work,

in connection with the remedy, or overcoming the effects, of the Event of Default.

In performing Hills Motorway's Work, whether pursuant to a Total Step-In, Partial Step-In or otherwise (to the extent permitted by clause 9.4(a)(iii)), RTA must undertake such work in accordance with the Scope of Work and Technical Criteria and, where a verification, determination or certification of the Independent Verifier would have been required by Hills Motorway in respect of the performance of that work, obtain that verification, determination or certification from the Independent Verifier in accordance with the procedures in this Deed.

- (b) If RTA proposes to exercise its Default Step-In Rights, RTA's Representative must notify Hills Motorway in writing of the date RTA proposes to commence exercising its Default Step-In Rights (including identifying the Project Works, the Temporary Works and Hills Motorway's Work in respect of which RTA is exercising those rights) and promptly consult with Hills Motorway in relation to:
 - (i) the action that RTA proposes to take; and
 - (ii) the time period which RTA believes may be necessary for RTA to take such action.
- (c) If RTA exercises its Default Step-In Rights, RTA must:
 - (i) keep Hills Motorway informed of all communications with the Independent Verifier in relation to the performance of the relevant

aspects of Hills Motorway's Work in respect of which RTA has exercised those rights; and

- (ii) diligently pursue the exercise of its Default Step-In Rights:
 - A. where the failure to do so would have an adverse effect on the use, patronage or capacity of the M2 Motorway or the Company's ability to levy tolls; and
 - B. so as to enable Existing Operations to resume as soon as is reasonably practicable.
- (d) If RTA exercises its Default Step-In Rights, the Company's obligation to perform those parts of Hills Motorway's Work in respect of which RTA has exercised its Default Step-In Rights is suspended and RTA's Representative may on or after the Default Step-In Date direct Hills Motorway to do any one or more of the following:
 - (i) immediately suspend performance of all or any other part of Hills Motorway's Work;
 - (ii) co-operate with RTA or its nominees as and when required by RTA (in its absolute discretion) in relation to the exercise of RTA's Default Step-In Rights; and
 - (iii) take such other steps as RTA determines are reasonably necessary or desirable in order to:
 - A. continue the performance of the Existing 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 M2 Motorway; or
 - C. efficiently exercise its Default Step-In Rights,

in each case to ensure that the Event of Default is remedied (or its effects overcome) and Existing Operations are able to resume as soon as is reasonably practicable, and Hills Motorway must promptly comply with RTA's reasonable direction.

- (e) If RTA exercises its Default Step-In Rights, Hills Motorway must (and must, to the full extent reasonably practicable, procure that Hills Motorway's Subcontractors) give all reasonable assistance to RTA and its nominees required by RTA while RTA is exercising its Default Step-In Rights, including (without limitation) by:
- (i) giving RTA or its nominees access to the Project Site, the Temporary Areas, the Extra Land and any other land upon which Hills Motorway's Work is being carried out (or those parts in respect of which RTA has exercised its Default Step-In Rights);
 - (ii) making available to RTA or its nominees all relevant staff of Hills Motorway and, upon a Partial Step-In and to the extent the Company's Subcontractors are performing works in respect of which RTA has exercised its Default Step-In Rights, Hills Motorway's Subcontractors;
 - (iii) to the extent practicable (including having regard to Hills Motorway's obligations in relation to the Existing Operations, Hills Motorway's rights under its Subcontracts and Hills Motorway's obligations under this Deed), giving RTA or its nominees possession of all plant, equipment, materials, temporary works, tools, spare parts, consumables and repairable items being used in Hills Motorway's Work and other things on or in the vicinity of the Project Site, the Temporary Areas, the Extra Land and any other land upon which Hills Motorway's Work (or those parts in respect of which RTA has exercised its Default Step-In Rights) is being carried out, in each case which are owned by or in the lawful possession of Hills Motorway and its Subcontractors and are required to facilitate the carrying out of Hills Motorway's Work (or those parts in respect of which RTA has exercised its Default Step-In Rights) (**Step-In Items**) or otherwise procuring that such Step-In Items are made available to enable RTA to exercise its Default Step-In Rights;
 - (iv) making available to RTA or its nominees all documentation (or copies of documentation) relating to the Project within the custody or control of Hills Motorway and Hills Motorway's Subcontractors, including all Proprietary Documentation and any other documentation relating to the Project within the custody or control of Hills Motorway and Hills Motorway's Subcontractors;
 - (v) upon a Partial Step-In and subject to clause 9.5(h), enabling RTA to step-in to any Subcontracts relevant to those parts of Hills Motorway's Work in respect of which RTA has exercised its Default Step-In Rights;
 - (vi) if required by RTA (other than in connection with a Partial Step-In), procuring a novation to RTA or its nominees of any Subcontract entered into by Hills Motorway or Subcontract entered into by the Contractor in connection with the performance of Hills Motorway's Work which has not yet achieved Construction Completion at the date of RTA exercising its Default Step-In Rights;
 - (vii) facilitating the smooth transfer of the performance, management and control of Hills Motorway's Work (or those parts in respect of which RTA has exercised its Default Step-In Rights) to RTA or its nominees (or both, as the case may be);

- (viii) 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 9.4(e)(vi) difficult; and
 - (ix) doing all other acts and things reasonably required by RTA to enable RTA or its nominees to be in a position to remedy or overcome the effects of, and to remedy or overcome the effects of, the Event of Default.
- (f) Hills Motorway, for the sole purposes of executing any document reasonably required for the sole purposes of, or to give effect to, this clause 9.4, irrevocably appoints RTA as its attorney on and from the Default Step-In Date until RTA ceases exercising its Default Step-In Rights, with full power and authority to execute any such document and do any such other thing on behalf of Hills Motorway if Hills Motorway fails to execute such document or do such other thing within 5 Business Days of being requested in writing to do so by RTA, where the appointment is necessary to allow RTA to exercise its Default Step-In Rights.
- (g) If RTA achieves Construction Completion of a Stage in the course of exercising its Default Step-In Rights:
- (i) the achievement of Construction Completion of that Stage will be deemed to be a remedy by Hills Motorway of the Event of Default in respect of which RTA exercised such Default Step-In Rights;
 - (ii) the Stage will form part of the M2 Motorway as if Hills Motorway had achieved Construction Completion of that Stage; and
 - (iii) Hills Motorway must comply with its obligations in respect of that Stage under this Deed and the M2 Motorway Project Deed (including, for the avoidance of doubt, Hills Motorway's obligations under clause 11 of Annexure A) as if Hills Motorway had achieved Construction Completion of that Stage.
- (h) RTA may give Hills Motorway notice of RTA's intention to cease the exercise of its Default Step-In Rights at any time.
- (i) If RTA gives Hills Motorway a Step-Out Notice:
- (i) RTA will cease the exercise of its Default Step-In Rights in accordance with the Step-Out Notice; and
 - (ii) Hills Motorway must recommence performance of Hills Motorway's Work (where such performance has been prevented by RTA 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 RTA but in any event will be no later than 60 Business Days after the date on which RTA gives Hills Motorway the Step-Out Notice) (**Step-Out Date**).

- (j) Notwithstanding any other provision of this clause 9, if, after Hills Motorway recommences performance of Hills Motorway's Work under clause 9.4(i)(ii), an Event of Default of the same type as the Event of Default that has previously entitled RTA 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**), RTA may give Hills Motorway notice that a Repeated Event of Default has occurred and this clause 9 will apply to the Repeated Event of Default, except:
- (i) the period available to Hills Motorway under this Deed and any person appointed by the Financiers under the RTA Consent Deed (as referred to in clauses 9.2(a), 9.2(e), 9.2(f) and 9.2(g) of this Deed) to remedy or overcome the effects of the Repeated Event of Default will not exceed 3 months in aggregate; and
 - (ii) if the Repeated Event of Default has not been remedied (or its effects overcome) within the period required under clause 9.2 (as limited by clause 9.4(j)(i)), RTA may terminate this Deed in accordance with clause 9.3(a)(iv) or exercise its Default Step-In Rights in accordance with this clause 9.4.
- (k) Each of the Company and the Trustee acknowledge and agree that:
- (i) RTA has no liability for any Loss or Claim which either of the Company or the Trustee suffers or incurs as a result of the exercise of the Default Step-In Rights (including, where RTA does not exercise its right to require novation of a Subcontract under clause 9.4(e)(vi), any amounts payable by Hills Motorway to the relevant Subcontractor following termination of that Subcontract, but excluding amounts required to be reimbursed by RTA to Hills Motorway in accordance with clause 9.5(i)) except to the extent of RTA's negligence or wilful default in the exercise of its Default Step-In Rights;
 - (ii) Hills Motorway must indemnify and release RTA from and against any such Loss or Claim except to the extent of RTA's negligence or wilful default in the exercise of its Default Step-In Rights;
 - (iii) neither the Company nor the Trustee will be entitled to any relief from its obligations except to the extent expressly provided for by this clause 9, nor any compensation from RTA, in respect of the exercise by RTA or its nominees of Default Step-In Rights in accordance with this clause 9; and
 - (iv) neither RTA's rights nor Hills Motorway's liabilities or obligations, whether under this Deed or otherwise according to Law, in respect of any event entitling RTA to exercise the Default Step-In Rights, will be limited by the terms of this clause 9.4(k), except to the extent expressly provided in this clause 9.
- (l) In the case of a Partial Step-In by RTA, 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 management of their respective rights in connection with Subcontracts and Subcontractors and the performance of Hills Motorway's Work during any period in which RTA is exercising Default Step-In

Rights so as to minimise, to the extent reasonably practicable, any adverse impact of the exercise of Default Step-In Rights on Hills Motorway's ability to carry out Hills Motorway's Work and the Existing Operations.

9.5 RTA Default Step-In Costs

- (a) The reasonable costs incurred by RTA in exercising its Default Step-In Rights up to \$469.9 million (discounted back to 31 December 2009 dollars using a discount rate of 10.81% per annum):
- (i) including but not limited to the reasonable:
- A. contracting and procurement costs incurred by RTA in connection with the negotiation, entry into, and management of contracts for work and/or services;
 - B. financing costs incurred by RTA in respect of any loan taken out by RTA; and
 - C. costs incurred by RTA pursuant to any Subcontract novated to RTA pursuant to clause 9.4(e)(vi),
- in connection with remedying or overcoming the effects of the Event of Default; and
- (ii) excluding any costs incurred by RTA in carrying out Additional Works,
- (RTA Default Step-In Costs)** will, with effect on and from the Date of Construction Completion of Stage 3 and subject to clause 9.5(l), be a debt due from Hills Motorway to RTA and payable to RTA in instalments in accordance with the Cost Payment Schedule on the basis that the RTA Default Step-In Costs accrue interest from the date that they are incurred by RTA at the Deferred Interest Rate (without any double counting of the costs referred to in clause 9.5(a)(i)B).
- (b) The Parties agree that RTA must provide Hills Motorway with all documentation upon which RTA relies, and any other information reasonably required by Hills Motorway, to substantiate the costs referred to in clause 9.5(a).
- (c) Subject to clause 9.5(d) and 9.5(f), on each Quarterly Payment Date after the Date of Construction Completion of Stage 3, the Company must pay the Quarterly Instalment for that Quarter.
- (d) The Trustee is only required to pay a Quarterly Instalment to RTA to the extent that the Trustee has Available Funds to make such payment, and, to the extent that on any Quarterly Payment Date the Trustee has insufficient Available Funds to pay the Quarterly Instalment due on that Quarterly Payment Date:
- (i) the Trustee must pay that portion of the Quarterly Instalment to the full extent to which it has 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 Payment Date on which such amount would have been payable if not for this clause

9.5(d) until the date the amount (and any accrued interest) is paid in accordance with clause 9.5(e),

and any shortfall will not be payable other than in accordance with clause 9.5(e).

- (e) Where clause 9.5(c) has applied in relation to a Quarter and there remains any Unpaid Quarterly Instalments, the Trustee must, on each Quarterly Payment Date until there ceases to be any Unpaid Quarterly Instalments, pay an amount to RTA calculated as the lesser of:
 - (i) Available Funds after the payment of any amount payable under clause 9.5(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 9.5(d)(ii).
- (f) Subject to clause 9.5(g), RTA acknowledges and agrees that if RTA exercises its Default Step-In Rights and Construction Completion of Stage 3 does not occur, Hills Motorway will not have any obligation to repay any RTA Default Step-In Costs to RTA in accordance with this clause 9.
- (g) Notwithstanding any other provision of this clause 9, RTA will be deemed to have achieved Construction Completion of Stage 3 if the Independent Verifier issues a written notice under clause 10.1(d)(i)B of Annexure A that the only work remaining to be completed to achieve Construction Completion of Stage 3 is:
 - (i) provision of the Excluded Proprietary Documentation, or the completion of work which cannot be performed by RTA without access to the Excluded Proprietary Documentation;
 - (ii) the work set out in Schedule 21 to the D&C Contract;
 - (iii) the updating of the Maintenance Manual in accordance with clause 13 of Annexure A;
 - (iv) any work RTA has been prevented from performing as consequence of RTA complying with RTA's obligations to Hills Motorway under this clause in connection with Hills Motorway carrying out the Existing Operations; or
 - (v) or any other work RTA has been prevented from performing as a result of:
 - A. a breach by Hills Motorway;
 - B. a failure by Hills Motorway to provide RTA with access to the Project Site, the Temporary Areas, the Extra Land or the M2 Motorway (provided that Hills Motorway is not required to provide access to the Project Site, the Temporary Areas or the M2 Motorway beyond those rights it has under

the Project Documents, the M2 Motorway Project Deed or the leases granted under clauses 4 or 4A of the M2 Motorway Project Deed).

- (h) Notwithstanding anything to the contrary in this Deed, RTA's rights to recover the RTA Default Step-In Costs from Hills Motorway are limited to the rights specified in this clause 9.5.
- (i) If RTA steps in to a Subcontract, RTA must promptly reimburse Hills Motorway for any portion of the contract sum payable by Hills Motorway (including amounts payable by the Contractor to the relevant Subcontractor and any change costs payable under the Subcontract in connection with Additional Works) in connection with the Subcontract in respect of the period from the Default Step-In Date to the Step-Out Date.
- (j) Hills Motorway agrees that any reimbursement made in accordance with clause 9.5(i) will be included in the calculation of the RTA Default Step-In Costs.
- (k) The Parties agree that this clause 9.5 is RTA's sole remedy for the recovery of the RTA Default Step-In Costs.
- (l) The Parties agree that the quantum of any RTA Default Step-In Costs to be paid by the Trustee in accordance with this Deed will exclude any amounts received by RTA in accordance with clause 3.2 of the Equity Subscription Deed.

9.5A Step-In Costs Reserve Account

- (a) Within 5 Business Days after the Default Step-In Date, Hills Motorway must establish an account to be styled "M2 Motorway - Step-In Cost Reserve Account".
- (b) If at any time after the Default Step-In Date, RTA reasonably believes (based on advice from the Independent Verifier) that Construction Completion of Stage 3 will occur within a period of 12 months or less, RTA may provide written notice to Hills Motorway specifying the date on which RTA reasonably believes the Date of Construction Completion of Stage 3 will occur (**RTA Completion Notice**).
- (c) If at any time after the date on which:
 - (i) Hills Motorway receives an RTA Completion Notice; or
 - (ii) RTA achieves Construction Completion of Stage 3 pursuant to the exercise of its Default Step-In Rights,the SCR is less than 2.0:1, then from that date (an **SCR Date**) and subject to clause 9.5A(d), Hills Motorway must, within 30 days of each 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) Hills Motorway's obligation to fund the Step-In Costs Reserve Account to the Required Level under clause 9.5A(c) will immediately cease if:
 - (i) at any time after the relevant SCR Date, the SCR is equal to or greater than 2.0:1; or

- (ii) where clause 9.5A(c)(i) applies, Hills Motorway and RTA agree (each acting reasonably and on the advice of the Independent Verifier) that the Anticipated RTA Completion Date will not occur within 12 months of the relevant SCR Date.
- (e) Hills Motorway may not withdraw any amount from the Step-In Costs Reserve Account:
 - (i) other than to pay a Quarterly Instalment (or part thereof) due to RTA in accordance with clause 9.5 which would otherwise be unpaid because Hills Motorway has insufficient Available Funds to pay the Quarterly Instalment (or part thereof) on the relevant Quarterly Payment Date; or
 - (ii) unless RTA has issued a Step-Out Notice or has otherwise ceased to exercise its Default Step-In Rights prior to RTA achieving Construction Completion of Stage 3; or
 - (iii) unless clause 9.5A(d) applies.
- (f) If at any time, the cash balance of the Step-In Costs Reserve Account exceeds the Required Level, Hills Motorway 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) Hills Motorway may, at any time, replace all of the cash balance maintained in the Step-In Costs Reserve Account by providing RTA 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 a Satisfactory Rating, Hills Motorway must promptly, but in any event within 7 Business Days of the Authorised Bank ceasing to hold a Satisfactory Rating, 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 RTA with an equivalent face value to the letter of credit to be replaced.
- (i) If the face value of any Acceptable LC provided under this clause 9.5A exceeds the Required Level, Hills Motorway may replace that Acceptable LC:
 - (i) with cash deposited into the Step-In Costs Reserve Account; or
 - (ii) by providing a new Acceptable LC to RTA,
so that the cash balance in the Step-In Costs Reserve Account is equal to the Required Level.
- (j) 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 LC's provided to RTA in accordance with this clause 9.5A.
- (k) Hills Motorway must (without limiting the obligations of Hills Motorway under clause 16.1 of the M2 Motorway 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 at the administrative building located on the Premises (as defined in the M2 Motorway Deed) or the Company's principal place of business in New South Wales and ensure that the books of account and records are available to RTA at all reasonable times for examination, audit, inspection, transcription and copying;
- (ii) if this Deed is terminated, allow RTA access to any books of account and records referred to in clause 9.5A(k)(i) for a period of seven years; and
- (iii) as soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, each of the Company and the Trustee must give RTA certified copies of the audited financial statements for the previous Financial Year of the Company, the Trustee and the consolidated Hills Motorway Group.

9.6 Additional Works

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

- (a) RTA may issue a document entitled "Additional Works Proposal" to Hills Motorway which sets out details of the proposed Additional Works;
- (b) within 15 Business Days of receipt of an "Additional Works Proposal" from RTA under clause 9.6(a), Hills Motorway must provide RTA with a written notice containing:
 - (i) the Company's estimate of the operating and maintenance costs or savings that will be incurred by the Company as a result of the RTA 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 M2 Motorway or the M2 Upgrade or the Company's ability to levy or collect tolls;
 - (v) details of any adverse affect of the proposed Additional Works on Existing 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 9.6(b), RTA must:
- (i) give a written notice to Hills Motorway that it withdraws the relevant "Additional Works Proposal", in which case RTA will not carry out the Additional Works;
 - (ii) give a written notice to Hills Motorway that it agrees with the matters referred to in Hills Motorway's notice, in which case RTA may carry out the Additional Works and Hills Motorway's obligations under this Deed, the Existing Operations and the other matters referred to in clause 9.6(b) will be varied to the extent set out in the notice given under clause 9.6(b); or
 - (iii) give a written notice to Hills Motorway that it disagrees with the matters referred to in Hills Motorway's notice and requires the dispute to be referred for determination under clause 11, in which case RTA may, where the carrying out of the Additional Works by RTA has been agreed to by the Parties, or is permitted, in accordance with clause 9.6(d) (even if the matters referred to in Hills Motorway's notice have not been), carry out the Additional Works before the dispute has been determined under clause 11 and the Existing Operations and Hills Motorway's obligations under this Deed and the other matters referred to in clause 9.6(b) will be varied to the extent set out in the notice given under clause 9.6(b) and agreed by RTA or, to the extent that agreement is not reached, as determined in accordance with clause 11;
- (d) unless otherwise agreed by the Parties, RTA 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 Final Completion cause a greater reduction in capacity or patronage of the M2 Motorway than the reduction in capacity or patronage which the M2 Upgrade Base Case Financial Model forecasts at the date of this Deed will arise as a consequence of carrying out Hills Motorway's Work; or
 - (ii) adversely affect:
 - A. the use, patronage or capacity of the M2 Upgrade;
 - B. the use, patronage or capacity of the M2 Motorway following Final Completion; or
 - C. Hills Motorway's ability to levy or collect tolls; and
- (e) if Additional Works undertaken by RTA in accordance with this clause 9.6 result in the Company incurring additional operating and maintenance costs, RTA must pay the Company those costs (as agreed under clause 9.6(c) or determined in accordance with clause 11). Unless otherwise agreed, RTA 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 RTA in accordance with clause 9.5 at that time (**Owed Amounts**), by

setting-off amounts due to the Company under this clause 9.6(e) against the Owed Amounts; or

- (ii) otherwise within 10 Business Days after completion of the Additional Works.

9.6A Rights and obligations not affected

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

9.6B Reinstatement of the M2 Motorway

- (a) Where an Event of Default is subsisting, and RTA:
 - (i) has a right under this Deed to exercise its Default Step-In Rights, but has not given Hills Motorway a notice under clause 9.3(a) within 60 Business Days of being entitled to do so under clause 9.3(a);
 - (ii) exercises its Default Step-In Rights but elects to cease exercising those rights prior to Construction Completion of the last of Stages 1, 2 and 3 to be completed; 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 9.3(a),

and either:

- (iv) Hills Motorway is not able to comply with the Existing Operations or the M2 Motorway Project Deed; or
- (v) RTA and Hills Motorway agree (acting reasonably) that the M2 Motorway should be reinstated to minimise a material adverse effect that the Event of Default will have on the capacity or patronage of the M2 Motorway,

either Party may propose a plan (**Reinstatement Plan**) for the reinstatement of the M2 Motorway.

- (b) A Reinstatement Plan must contain a detailed description of the works necessary to ensure the prompt repair or replacement of the M2 Motorway so that:
 - (i) the Company and the Trustee are able to comply with their obligations under the M2 Motorway Project Deed;
 - (ii) the material adverse effect of the Event of Default upon the capacity or patronage of the M2 Motorway is minimised; and
 - (iii) to the extent reasonably practicable having regard to the other Reinstatement Criteria only, it preserves the flexibility of the Parties to continue to carry out the 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 Hills Motorway (**Hills Reinstatement Plan**), RTA may either:
 - (i) direct Hills Motorway to carry out the Hills Reinstatement Plan; or
 - (ii) direct Hills Motorway to carry out an alternate Reinstatement Plan proposed by RTA (**RTA Reinstatement Plan**).
- (d) If RTA proposes an RTA Reinstatement Plan in accordance with clause 9.6B(c)(ii), Hills Motorway must, within 20 Business Days of receipt of the RTA Reinstatement Plan, either:
 - (i) notify RTA of its acceptance of the RTA Reinstatement Plan; or
 - (ii) if Hills Motorway considers in good faith that the RTA Reinstatement Plan does not comply with the Reinstatement Criteria, refer this dispute for determination under clause 11.
- (e) As soon as reasonably practicable following the earlier of:
 - (i) a direction by RTA to carry out a Hills Reinstatement Plan;
 - (ii) notification by Hills Motorway to RTA of its acceptance of the RTA Reinstatement Plan; and
 - (iii) determination of a dispute as to whether the RTA Reinstatement Plan complies with the Reinstatement Criteria and, if not, the changes required so that it does meet the Reinstatement Criteria,

Hills Motorway must diligently pursue the implementation of the applicable Reinstatement Plan.

9.7 Latent defects in existing structures

- (a) RTA agrees that if RTA discovers any latent defect in the condition of a structure on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas or any Extra Land in exercising its Default Step-In Rights, RTA will promptly notify Hills Motorway.
- (b) Hills Motorway may (but is 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 RTA (**Alternative Design Solutions**) within 20 Business Days after receipt of a notice from RTA under clause 9.7(a).
- (c) If Hills Motorway proposes a Change in accordance with clause 9.7(b) and in RTA's reasonable opinion, it would not have been feasible for Hills Motorway 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 Hills Motorway as a consequence of the latent defect) then without limiting any other rights RTA has under this clause 9.7, RTA will:

- (i) consider the Change proposed by Hills Motorway, including Hills Motorway's proposed Alternative Design Solutions;
 - (ii) consider any information and supporting documentation in relation to the Alternative Design Solutions;
 - (iii) cooperate with Hills Motorway in assessing the Alternative Design Solutions (taking into account total capital and operating costs); and
 - (iv) consider the proposed Change in good faith pursuant to clause 7.2(c)(i) of Annexure A.
- (d) If Hills Motorway proposes a Change in accordance with clause 9.7(b) then, for the purposes of clause 9.5, any determination of the reasonable costs incurred by RTA 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, the Temporary Areas or any Extra Land encountered by RTA in exercising its Default Step-In Rights must:
- (i) include all costs which RTA considers are reasonable for RTA to incur in taking steps to render any structure affected by such latent defect safe and to otherwise minimise the risk of harm to:
 - A. the health or safety of persons;
 - B. the Environment;
 - C. any property; and
 - D. the safe operation of the M2 Motorway; and
 - (ii) otherwise be made having regard to RTA's obligations under clause 9.7(c).
- (e) All Disputes relating to or arising out of this clause 9.7 are to be resolved in accordance with the procedures set out in clause 11.

9.7A Rights and warranties

- (a) Where RTA engages a contractor to perform any works or services in connection with its Default Step-In Rights, RTA 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 6.1, 8.1 and 8.9 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 15.2(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 each of the Company and the Trustee that the contractor will indemnify each of the Company and the Trustee against all Loss suffered by the Company or the Trustee (as applicable) as a result of any damage to the M2 Motorway arising out of, or in connection with, the works or services performed by the contractor (including any loss of tolling revenue by the Company as a result of the damage and performance liquidated damages on similar terms to those contained in clause 11.12 of the D&C Contract).
- (b) If Hills Motorway recommences performance of Hills Motorway's Work or Construction Completion of a Stage is achieved, RTA must assign to each of the Company and the Trustee the benefit of warranties and rights obtained by RTA from a contractor referred to in clause 9.6A(a) (other than the collateral warranty referred to in clause 9.6A(a)(ii)) in connection with those works or that Stage (other than a novated contract between RTA and a Subcontractor entered into pursuant to clause 9.4).
- (c) Nothing in this clause 9.6A obliges RTA to actually obtain the rights and warranties referred to in clause 9.6A(a) 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 RTA in obtaining rights and warranties under this clause 9.6A may be included in the RTA Default Step-In Costs under clause 9.5.

9.8 Termination

- (a) If, at the expiration of the 20 Business Day period following the issue of a Termination Notice the Event of Default has not been remedied (or its effects overcome), RTA may, subject to the Financier's rights under the RTA Consent Deed, terminate this Deed by written notice to Hills Motorway.
- (b) Upon termination of this Deed pursuant to this clause 9.8:
 - (i) RTA will not be liable to pay any compensation or other moneys to Hills Motorway by reason of that termination (including, where RTA does not exercise its right to require novation of a Subcontract under clause 9.8(b)(iv), any amounts payable by Hills Motorway to the relevant Subcontractor following termination of that Subcontract);
 - (ii) Hills Motorway must carry out any rectification or remediation work reasonably required by RTA to reinstate the M2 Motorway in accordance with the Reinstatement Criteria (other than paragraph (iii) of those criteria) and enable the M2 Motorway to be operated in accordance with the M2 Motorway Project Deed;
 - (iii) if and to the extent that Hills Motorway fails to carry out such rectification or remediation work:
 - A. to the reasonable satisfaction of RTA; and
 - B. within the period to be specified by RTA after notice is given under clause 9.8(a),

RTA will be entitled to carry out itself, or procure, the rectification or remediation work, and any Loss suffered or incurred by RTA in taking action under this clause 9.8(b)(iii) will be a debt due and payable from Hills Motorway to RTA except to the extent such Loss arises from the negligence or wilful default of RTA or its contractors;

- (iv) RTA may require a novation of any one or more of any Subcontract or other contract entered into by Hills Motorway in respect of Hills Motorway's Work to the extent necessary to enable RTA to exercise its rights under clause 9.8(b)(iii);
 - (v) Hills Motorway must execute all documentation required to effect a transfer to RTA of its interest in the Project Assets to the extent necessary to enable RTA to exercise its rights under clause 9.8(b)(iii);
 - (vi) Hills Motorway must:
 - A. hand over (or provide copies of) books of account and all other records relating to Hills Motorway's Work;
 - B. hand over the Proprietary Documentation;
 - C. procure the assignment of the Company's rights under the insurance policies maintained by the Company under clause 15 of Annexure A; and
 - D. hand over (or provide copies of) any other documentation relating to the Project within the custody or control of Hills Motorway and Hills Motorway's Subcontractors,to RTA or its nominee to the extent necessary to enable RTA to exercise its rights under clause 9.8(b)(iii);
 - (vii) other than as required by (and to give effect to) clause 9.4(g)(i), clause 6 (and any amendments made to the M2 Motorway Project Deed prior to the date of termination in accordance with clause 6) will have no further effect;
 - (viii) other than to the extent it forms part of the M2 Motorway in accordance with clause 9.4(g) or Land (as defined in the M2 Motorway Project Deed), the Project Site, the Temporary Areas and any other land upon which Hills Motorway's Work is being carried out will revert to RTA; and
 - (ix) the Company must continue to operate and maintain the M2 Motorway in accordance with the M2 Motorway Project Deed.
- (c) Hills Motorway acknowledges that nothing in this clause 9 obliges RTA to require the novation of any Subcontract under clause 9.8(b)(iv).
- (d) Hills Motorway, for the sole purpose of executing any document reasonably required for the sole purposes of or to give effect to clause 9.8(b), irrevocably appoints RTA as its attorney on and from the date of termination of this Deed with full power and authority to execute any such document on behalf of Hills Motorway

if Hills Motorway fails to execute such document or do such other thing within 5 Business Days of being requested in writing to do so by RTA.

9.9 Management of incidents and safety

- (a) Without limiting any other obligations of Hills Motorway under this Deed or the M2 Motorway Project Deed:
 - (i) 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 M2 Motorway during any period in which RTA 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
 - (ii) Hills Motorway must immediately inform and keep RTA's Representative informed in writing about any action or measures Hills Motorway 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 M2 Motorway.
- (b) Notwithstanding any other provision of this clause 9 or the RTA Consent Deed, if Hills Motorway or a person appointed by the Financiers fails to promptly remedy an Event of Default (or the consequences of its negligence or wilful misconduct) and RTA's Representative believes that urgent action must be taken to minimise the risk to the health and safety of persons, the Environment, the M2 Upgrade or any property arising as a consequence of that failure, RTA 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.

9.10 Right to damages

- (a) Any termination of this Deed under clause 2.11(i) or 2.12(e) of 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) Any termination of this Deed by RTA under this clause 9 will entitle RTA to recover all Loss that RTA may suffer or incur arising out of or in any way in connection with termination of this Deed.
- (c) Nothing in this clause 9.10 will entitle RTA to recover any Indirect Loss that RTA may suffer or incur arising out of or in connection with the termination of this Deed from any other Party.

9.11 Termination by Hills Motorway

- (a) Subject to clause 9.12, Hills Motorway may terminate this Deed by giving RTA 30 Business Days' written notice if:
 - (i) a court makes (or makes in respect of a matter) a Final Determination which prevents Hills Motorway from undertaking Hills Motorway's Work substantially in accordance with this Deed (except where the Final Determination is issued as a result of a default by Hills Motorway or its

- contractors under the Project Documents or some other wrongful act or wrongful omission by Hills Motorway or its contractors) and RTA fails to procure that the effect of the court order is overcome within 12 months of Hills Motorway notifying RTA in writing of the court order;
- (ii) the Government enacts legislation (including any rules, regulations or by-laws under that legislation) which prohibits or has the effect of prohibiting Hills Motorway from undertaking Hills Motorway's Work substantially in accordance with this Deed;
 - (iii) an Authority resumes any part of the land on which Hills Motorway's Work is to be carried out and as a result Hills Motorway is prevented from undertaking Hills Motorway's Work substantially in accordance with this Deed;
 - (iv) RTA breaches clause 2.1 of Annexure A and such breach:
 - A. prevents Hills Motorway from undertaking Hills Motorway's Work substantially in accordance with this Deed; and
 - B. is not remedied (or its effects overcome) within 12 months after written notice from Hills Motorway to RTA specifying the breach.
- (b) If an event referred to in clause 9.11(a)(i) or 9.11(a)(iv) occurs, then in respect of the 12 month period referred to in clause 9.11(a)(i) or 9.11(a)(iv)B (as applicable), RTA must pay Hills Motorway in respect of that period monthly in arrears an amount (including costs, losses or expenses) sufficient to place Hills Motorway in the net (including after Tax) position it would have been in had the event referred to in clause 9.11(a)(i) or 9.11(a)(iv) (as applicable) not occurred.
- (c) Subject to the M2 Motorway Project Deed remaining on foot, if Hills Motorway terminates this Deed, clauses 9.8(b)(ii) to (viii) will apply (except that the cost of performance of any obligations of Hills Motorway under those clauses will be borne by RTA).

9.12 Suspension of termination notice

- (a) If Hills Motorway issues a notice of termination under clause 9.11, RTA may suspend Hills Motorway's right to terminate, by giving it written notice to that effect within 30 Business Days of receipt of Hills Motorway's notice.
- (b) RTA's suspension of Hills Motorway's right to terminate expires:
 - (i) upon notice to that effect from RTA;
 - (ii) 12 months after the date of Hills Motorway's notice under clause 9.11; or
 - (iii) when the relevant event is remedied by RTA or no longer exists,
 whichever is earliest.
- (c) If RTA's suspension of Hills Motorway's right to terminate expires:

- (i) under clause 9.12(b)(i) or 9.12(b)(ii), this Deed automatically terminates under clause 9 on that date; or
 - (ii) under clause 9.12(b)(iii), this Deed continues in force.
- (d) Hills Motorway 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 RTA suspends Hills Motorway's rights to terminate, it must pay Hills Motorway in respect of the period of suspension monthly in arrears an amount (including costs, losses or expenses) sufficient to place Hills Motorway in the net (including after Tax) position it would have been in had the event on the basis of which Hills Motorway's notice under clause 9.11 was issued not occurred.

9.13 Early Termination Amount

Without prejudice to clause 9.8, if this Deed is terminated under:

- (a) clause 2.11(i) or 2.12(e) of Annexure A or clause 9.11; or
- (b) clause 9.14, in circumstances where termination of the M2 Motorway Project Deed has occurred in accordance with clause 14.4 of the M2 Motorway Project Deed,

RTA must within 30 days of termination:

- (c) pay the Early Termination Amount to Hills Motorway; and
- (d) release any Security Bonds then held by RTA.

9.14 Termination of the M2 Motorway Project Deed

Subject to the RTA Consent Deed, this Deed will automatically terminate upon termination of the M2 Motorway Project Deed and, subject to clause 9.13(b), clauses 9.8(b)(i) to (viii) (inclusive), 9.8(c) and 9.8(d) will apply to such termination.

10. Force Majeure

10.1 Force Majeure notice

- (a) If Hills Motorway alleges or wishes to claim that Force Majeure has occurred, Hills Motorway must give RTA's Representative prompt written notice of the Force Majeure once it becomes aware of the same and the obligations affected together with full particulars of all relevant matters including:
 - (i) details of the Force Majeure;
 - (ii) details of the obligations affected;
 - (iii) details of the action Hills Motorway has taken and/or proposes to take to remedy the situation;

- (iv) an estimate of the time during which Hills Motorway will be unable to carry out its obligations due to the Force Majeure;
 - (v) an estimate of the costs that Hills Motorway will incur to remedy the situation; and
 - (vi) details of all insurance moneys upon which Hills Motorway will be able to rely in making good damage caused by the Force Majeure.
- (b) After giving notice under clause 10.1(a), Hills Motorway must continue to provide to RTA's Representative all relevant information pertaining to the Force Majeure.

10.2 Meeting

The Parties must meet within 5 Business Days of service of a notice of Force Majeure event to determine the estimated length of time for which the Force Majeure will continue.

10.3 Suspension of obligations

- (a) If a Force Majeure occurs, Hills Motorway's obligations under this Deed (other than under this clause 10) which are affected by the Force Majeure will be suspended but only to the extent and for so long as such obligations are affected by the Force Majeure.
- (b) If a Force Majeure occurs and a notice under clause 10.1(a) is issued, no Party will be in default of its obligations under this Deed in so far as the failure or delay in the observance or performance of those obligations by that Party is caused by the Force Majeure specified in the notice given under clause 10.1(a).
- (c) Upon Hills Motorway becoming able to recommence performing its obligations which were suspended under clause 10.3(a), Hills Motorway must recommence the performance of those obligations.

10.4 Duty to remedy Force Majeure

Hills Motorway must remedy the effects of a Force Majeure promptly in accordance with clause 15.7 of Annexure A, including (subject to clause 15.1(b) of Annexure A) making any reasonable expenditure of funds which may mitigate or avoid the effects of the Force Majeure.

10.5 No limitation

Nothing in this clause 10 limits the rights and obligations of the Parties under this Deed in connection with a Stage which has achieved Construction Completion, provided that if a Force Majeure has affected any Hills Motorway's Work remaining to be carried out in respect of a Stage which has achieved Construction Completion, this clause 10 will apply to the Parties' rights and obligations with respect to such Hills Motorway's Work.

11. Dispute resolution

11.1 Procedure for resolving disputes

- (a) All disputes between RTA and Hills Motorway relating to or arising out of this Deed, or Hills Motorway's Work (**Disputes**) are to be resolved in accordance with the procedures set out in this clause 11.
- (b) The sequential procedure that is to be followed to resolve a Dispute is as follows:
 - (i) firstly, negotiation of the Dispute under clause 11.2;
 - (ii) secondly, in the case of:
 - A. a Dispute as to whether or not a manifest error exists in a determination of the Independent Verifier; or
 - B. those Disputes referred to in, contemplated by, or arising under or in connection with clause 7.1(a)(iii)C, 7.1(a)(iv) or clause 7.3(a) of Annexure A or clause 9.6(c)(iii);expert determination of the Dispute in accordance with clauses 11.3 to 11.8 (inclusive); and
 - (iii) thirdly, arbitration of the Dispute under clause 11.9 to 11.11 (inclusive).
- (c) It is a condition precedent to the referral of a Dispute to arbitration under clauses 11.9 to 11.11 that a Party first exhaust the procedures referred to in clause 11.1(b)(i) and clause 11.1(b)(ii) (as applicable).

11.2 Negotiation

- (a) If a Dispute arises then a Party may give notice to the other Party requesting that the Dispute be referred for resolution to the chief executive officers of RTA and Hills Motorway or their nominees.
- (b) A notice under clause 11.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 11.2; and
 - (iii) include or be accompanied by reasonable particulars of the matters in dispute.
- (c) If a Dispute is referred to the persons referred to in clause 11.2(a) (**Representatives**), then the Representatives must meet and use reasonable endeavours acting in good faith to resolve the Dispute (in whole or in part) within 5 Business Days of the date on which the notice under clause 11.2(a) is received (or such later date as the Parties may agree). The joint decision (if any) of the Representatives will be reduced to writing and will be contractually binding on the Parties.

11.3 Expert determination

- (a) If a Dispute of the nature referred to in or contemplated by clause 11.1(b)(ii), which has been referred to the Representatives for negotiation pursuant to clause 11.2 remains unresolved (in whole or in part) after the expiration of the period referred to in clause 11.2(c) then either Party may by giving notice to the other Party within 10 Business Days after the expiry of that period require that those parts of the Dispute which remain unresolved be referred to an expert for determination in accordance with clauses 11.4 to 11.8 (inclusive).
- (b) A notice under clause 11.3(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 11.3; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

11.4 Selection of expert

- (a) Within 7 Business Days after the date of the notice under clause 11.3(a) the Parties must exchange written lists of 3 persons from whom the expert is to be chosen in order of preference.
- (b) A Dispute required to be referred to or resolved by expert determination will be determined by an independent expert being any person that appears on each Parties' list under clause 11.4(a) and if more than one person appears on each list the person given the highest order of priority by the Party that gave the notice under clause 11.3(a).
- (c) If no person appears on the list of each Party, the Party which gave the notice under clause 11.3(a) must procure the National President (or acting National President for the time being) of the IAMA to nominate a person to act as the expert.
- (d) The expert determination process is to be administered in accordance with clause 11.5.
- (e) It is the intention of the Parties that the expert appointed to determine a Dispute will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (f) RTA and Hills Motorway will not be entitled to challenge the appointment of an expert under clause 11.4 on the basis that the expert does not satisfy the requirements of clause 11.4(e).
- (g) Any agreement for expert determination under this Deed will not constitute an Arbitration Agreement for the purposes of the *Commercial Arbitration Act 1984* (NSW).
- (h) RTA and Hills Motorway must enter into an agreement with the expert on the terms of Schedule 4 or such other terms as the expert may require.

11.5 Rules of expert determination

- (a) The expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks appropriate without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) take into consideration all documents, information and other material which the Parties give the expert including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
 - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks it is appropriate;
 - (v) use his or her own expertise in forming his or her conclusions; and
 - (vi) make his or her determination of the Dispute within 30 days from the acceptance by the expert of the appointment, or such extended period as the Parties may agree.
- (b) The expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the Parties, together but not separately, and in connection with any such meeting or discussions:
 - (i) a Party may be accompanied by legal or other advisers; and
 - (ii) the Parties agree to be bound by such procedural directions as may be given by the expert, both in preparation for and during the course of the meeting or discussions.
- (c) Without restricting the generality of clause 11.5(b)(ii), RTA and Hills Motorway agree and undertake to produce such information and documents as the expert may from time to time direct at such place and at such time as the expert may direct.
- (d) The expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the expert in his or her determination.
- (e) RTA and Hills Motorway must indemnify the expert for the reasonable cost of retaining those advisers or consultants.
- (f) The expert will disclose to the Parties any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents who are involved in expert determination and any interest the expert has in the matters in dispute.
- (g) If the expert becomes aware of any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert will immediately inform RTA and Hills Motorway.

- (h) After the Parties have had the opportunity to consider the expert's disclosure then either Party may require that the Dispute be referred to another expert for resolution in accordance with clauses 11.4 to 11.8 (inclusive) by giving notice in writing to the other Party within 5 Business Days of the date on which it was informed of the circumstance.

11.6 Expert finding

- (a) The determination of the expert:
 - (i) must be given to the Parties in writing;
 - (ii) will be final and binding on RTA and Hills Motorway unless within 10 Business Days of receipt of the determination, a Party gives notice to the other Party of its dissatisfaction and intention to refer the matter to arbitration pursuant to clauses 11.9 to 11.11 (inclusive); and
 - (iii) is to be given effect to by the Parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.
- (b) Upon submission by either Party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
 - (iv) a defect in form.

11.7 Release and indemnity

The expert will not be liable in respect of the expert determination, except in the case of fraud on the part of the expert. RTA, the Company and the Trustee agree to release and indemnify the expert from and against all claims, except in the case of fraud on the part of the expert, which may be made against him or her by any person in respect of the expert's appointment to determine the Dispute.

11.8 Costs

RTA and Hills Motorway must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert.

11.9 Arbitration

- (a) If:
 - (i) a notice of dissatisfaction is given under clause 11.6(a)(ii);

- (ii) a determination is not made within 30 days from the date of acceptance by the expert of the appointment or such extended period as the Parties may agree; or
- (iii) a Dispute (other than a Dispute of the nature referred to in or contemplated by clause 11.1(b)(ii)) which has been referred to the Representatives for negotiation pursuant to clause 11.2 remains unresolved (in whole or in part) after the expiration of the period referred to in clause 11.2(c),

RTA or Hills Motorway may notify the other Party in writing that it requires the Dispute to be referred to arbitration.

- (b) Upon receipt by the other Party of a notice under clause 11.9(a) the Dispute will then be referred to arbitration.

11.10 Identity of arbitrator

Any arbitration under clause 11.9 must be conducted by a single arbitrator to be agreed between the Parties or, failing such agreement within 10 Business Days after referral of the Dispute to arbitration under clause 11.9(b), then by an arbitrator to be nominated by the IAMA.

11.11 Rules for conduct of arbitration

Any Dispute which is referred to arbitration will be conducted as follows:

- (a) if the arbitration is in respect of a matter which has been the subject of an expert determination, in accordance with the Expedited Arbitration Rules set out in Schedule 5; or
- (b) otherwise, in accordance with the Rules for the Conduct of Commercial Arbitration of the IAMA.

11.12 Place of expert determination or arbitration

The place of any expert determination or arbitration will be Sydney.

11.13 Continue to perform

Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this Deed.

11.14 Summary or urgent relief

Nothing will prejudice the right of a Party to institute proceedings to seek urgent injunctive, interlocutory or declaratory relief.

11.15 Security Trustee

- (a) The Parties acknowledge that the Financiers and the Security Trustee may have an interest in the outcome of certain Disputes and claims under this Deed.
- (b) Hills Motorway:

- (i) will be entitled to give the Security Trustee copies of all documents, information and other material given to the expert under clause 11.5 or to the arbitrator appointed under clause 11.10 for the purpose of arbitration under clause 11.11; and
- (ii) may, with RTA's prior written consent (acting reasonably) or as otherwise provided in the RTA Consent Deed:
 - A. allow the Security Trustee to:
 - 1) attend and participate in any meetings or negotiations between Hills Motorway and RTA and any hearing held by the expert or other meetings between any Party and the expert in relation to the Dispute or claim and at any arbitration of the Dispute under clause 11.11; and
 - 2) make submissions in the expert hearing or meetings or arbitration (as the case may be); and
 - B. have proceedings between Hills Motorway and the Security Trustee consolidated or heard together with like proceedings between RTA and Hills Motorway.

12. Representations and warranties

12.1 Representations and warranties by Hills Motorway

Each of the Company and the Trustee makes the following continuing representations and warranties in relation to itself for the benefit of RTA:

- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under each Project Document to which it is expressed to be a party;
- (b) it has power to enter into and perform its obligations under each Project Document to which it is expressed to be a party, to carry out the transactions which those documents contemplate will be carried out by it and to carry on its business, and the entry into of each such document is a proper exercise of power;
- (c) its obligations under each Project Document to which it is expressed to be a party are valid and binding and are enforceable against it and in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights;
- (d) it subsists and is properly constituted;
- (e) in the case of the Company, that it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust and in the case of the Trustee, that other than as advised to RTA in writing, 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 Project Document to which RTA is expressed to be a party;

- (g) the execution, delivery and performance of each Project Document to which it is expressed to be a party and the transactions under each of them do not:
 - (i) violate its constituent documents or any law, regulation, treaty, judgment, ruling, order or decree of any court or official directive which is binding on it;
 - (ii) violate any other document or agreement to which it is a party or which is binding on it or any of its assets; or
 - (iii) cause a limitation on its powers or the powers of its directors or other officers to be exceeded;
- (h) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (i) no litigation (which has not been disclosed to RTA in writing prior to the date of this Deed), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, threatened against it which is likely to have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Document to which it is expressed to be a party; and
- (j) except as contemplated under a Project Document or the M2 Motorway Project Deed or in connection with a transaction which is contemplated by a Project Document or the M2 Motorway Project Deed, it is not involved in, and does not conduct, and it will not trade or incur any liabilities or carry on any business other than the business related to the M2 Motorway or enter into any document or agreement other than the Project Documents and the Project Documents (as defined in the M2 Motorway Project Deed) without RTA's prior written approval (acting reasonably).

12.2 Representations and warranties by RTA

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

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each Project Document to which it is expressed to be a party;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under each Project Document to which it is expressed to be a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of power;
- (d) its obligations under each Project Document to which it is expressed to be a party are valid and binding and are enforceable against it in accordance with their respective terms subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and

- (e) the execution, delivery and performance of each Project Document to which it is expressed to be a party and the transactions under each of them does not violate any law to which RTA is subject.

12.3 Representations and warranties by Minister

The Minister makes the following continuing representations and warranties for the benefit of each of the Company and the Trustee:

- (a) the Minister has the power to execute, deliver and perform his obligations under each Project Document to which he is expressed to be a party, and all necessary action has been taken to authorise that execution, delivery and performance;
- (b) the Project Documents are the Minister's valid and legally binding obligations enforceable against the Minister in accordance with their terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights; and
- (c) the execution, delivery and performances of the Project Documents will not contravene any Law to which the Minister is subject.

13. Expenses and stamp duties

13.1 Expenses

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

13.2 Stamp duties

As between the Parties, the Company must pay 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 and the Project Documents or any payment receipt or other transaction contemplated by them.

14. Governing law and jurisdiction

14.1 Governing law

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

14.2 Jurisdiction

In the circumstances provide for in clause 11.14:

- (a) each Party irrevocably submits to the 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; and
- (b) each Party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any

proceedings have been brought in an inconvenient forum, where that venue falls within clause 14.2(a).

15. Notices

Any communication under or in connection with this Deed:

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

RTA

Address: 101 Miller Street North Sydney NSW 2010

Facsimile: (02) 8588 4871

Attention: Director, Major Infrastructure

RTA's Representative

Address: 101 Miller Street North Sydney NSW 2010

Facsimile: (02) 8588 4171

Attention: Greg Butler

The Company and the Trustee

Address: c/- the Company
Level 5, 50 Pitt Street
Sydney NSW 2000

Facsimile: (02) 9254 4990

Attention: General Manager - Major Projects

with a copy to (provided that a failure to serve the copy will not itself be failure to serve notice):

Address: c/- the Company
Level 3, 505 Little Collins Street
Melbourne Victoria 3000

Facsimile: (03) 9649 7380

Attention: Company Secretary

The Minister

Address: Level 37
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Facsimile: (02) 9228 3585

Attention: Minister for Roads

(or as otherwise notified in writing by that Party to the other Party 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 of, that Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 15(b); and
- (e) 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 fax) at the local time (in the place of receipt of that fax) which then equates to the time at which the fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety unless that local time is a non-Business Day, or is 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
 - (iii) (in the case of delivery by hand) on delivery at the address of the recipient as provided in clause 15(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.

16. Miscellaneous

16.1 Entire agreement

To the extent permitted by Law, the Project Documents to which RTA, the Company and the Trustee are parties, the M2 Motorway Project Deed and the Project Documents (as defined in the M2 Motorway Project Deed) embody the entire understanding of the Parties and constitute the entire terms agreed upon between the Parties and supersede any prior agreement (whether or not in writing) between the Parties, in relation to the subject matter of those documents.

16.2 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 the other Party to give effect to this Deed.

16.3 Indemnities

- (a) Subject to clause 16.3(e) and clause 9.10(c), each of the Company and the Trustee must indemnify RTA from and against any Claim or Loss suffered or incurred by RTA arising out of, or in any way in connection with, the Company or the Trustee's breach of a term of this Deed.
- (b) No indemnity in this Deed limits the effect or operation of any other indemnity in this Deed.
- (c) Unless expressly provided otherwise, each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties, and survives the rescission, termination or expiration of this Deed.
- (d) It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.
- (e) The indemnity in this clause 16.3 does not include and neither of RTA or the Minister may make any Claim against the Company and the Trustee:
 - (i) under this clause 16.3 for any Loss suffered or incurred by RTA arising out of, or in any way in connection with, an Event of Default in respect of which RTA has exercised or is entitled to exercise its Default Step-In Rights; or
 - (ii) for any Indirect Loss exceeding \$20 million (in aggregate) suffered or incurred by RTA or the Minister arising out of, or in any way in connection with, a breach of clause 9.2 of this Deed or the Company or the Trustee's failure to remedy or overcome the effects of an Event of Default or achieve Construction Completion of all Stages.]

16.4 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.

16.5 Consents

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

16.6 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.

16.7 Interest

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

- (a) payable from the due date until payment is made by the first mentioned Party before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged; and
- (b) (subject to clause 9.5) calculated on daily balances at the rate of BBSY +2% per annum; and
- (c) capitalised monthly.

16.8 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 Hills Motorway any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by RTA of any right, power or remedy under this Deed or otherwise, are expressly waived.

16.9 No agency

Except as expressly permitted or contemplated by this Deed, Hills Motorway will not in connection with the Project Works or the Temporary Works 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 Project Works or the Temporary Works are being carried on or managed or supervised by RTA nor must Hills Motorway act as or represent itself to be the servant or agent of RTA.

16.10 Amendments

This Deed may only be varied by a document signed by or on behalf of each Party.

16.11 Counterparts

- (a) 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.
- (b) A Party who has executed a counterpart of this Deed may exchange that counterpart with the other Party by faxing the counterpart executed by it to that other Party and,

upon request by that other Party, will thereafter promptly deliver by hand or post to that other Party the executed counterpart so exchanged by fax, but delay or failure by that Party to so deliver a counterpart of this Deed executed by it will not affect the validity of this Deed.

16.12 No representation or reliance

- (a) Each of the Trustee and the Company acknowledges that neither RTA nor the Government nor anyone on their behalf have made any representation or other inducement to them to enter into those Project Documents to which RTA and they are expressed to be parties, except for inducements expressly set out in those Project Documents.
- (b) Each of the Trustee and the Company acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of RTA, the Government or anyone on their behalf except for any inducement expressly set out in those Project Documents to which RTA and either of the Trustee and the Company are expressed to be parties.

16.13 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.

16.14 Survival of certain provisions; no merger

- (a) Without limiting clause 16.3(c), clauses 4.2, 4.3, 15.3, 15.7 and 16 of Annexure A and clauses 8, 9.3, 9.5, 9.5A, 9.6B, 9.10, 9.11, 9.12, 9.13, 9.14 and this clause 16.14 of this Deed will survive rescission, termination or expiration of this Deed.
- (b) Without limiting clause 16.3(c), if this Deed is rescinded or terminated, no Party will be liable to the other Party except:
 - (i) under clauses 15.3, 15.7 and 16 of Annexure A and clauses 8, 9.3, 9.5, 9.5A, 9.10, 9.11, 9.12, 9.13, 9.14 and this clause 16.14; 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.

16.15 Severance

If at any time any provision of this Deed or any other Project Document to which RTA is a party 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 the relevant Project Document; or

- (b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of the relevant Project Document.

16.16 Approvals not to affect Hills Motorway's 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 RTA will not, except where this Deed expressly provides to the contrary, relieve Hills Motorway from its obligations under this Deed.

16.17 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 clause 16.17(a), the rights, obligations and liabilities of RTA and Hills Motorway 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.

Schedule 1

Amendments from the Satisfaction Date

With effect from the Satisfaction Date:

- (a) clauses 1 to 17 (inclusive) of the M2 Motorway Project Deed is amended and restated as set out in Annexure B;
- (b) Schedule 2 to the M2 Motorway Project Deed is amended and restated as set out in Annexure C;
- (c) Exhibit A to the M2 Motorway Project Deed is amended and restated as set out in Annexure D;
- (d) Exhibit B to the M2 Motorway Project Deed is amended as set out in Annexure E;
- (e) Exhibit C to the M2 Motorway Project Deed is amended and restated as set out in Annexure F;
- (f) Exhibit D to the M2 Motorway Project Deed is amended and restated as set out in Annexure G;
- (g) Annexure H is inserted as Exhibit D1 to the M2 Motorway Project Deed;
- (h) Annexure I is inserted as Exhibit D2 to the M2 Motorway Deed;
- (i) Annexure J is inserted as Exhibit D3 to the M2 Motorway Project Deed;
- (j) Annexure K is inserted as Exhibit D4 to the M2 Motorway Project Deed; and
- (k) Annexure L is inserted as Exhibit D5 to the M2 Motorway Project Deed.

Schedule 2
Not used

Schedule 3 Amendments from Final Completion

With effect from the Date of Final Completion:

- (a) paragraph (b) of the definition of "Term" in clause 1.1 of the M2 Motorway Project Deed is deleted and replaced with the following paragraph:

"(b) the period which begins on the M2 Motorway Commencement Date and ends on the day the Term ends under the Company Lease, the Trust Lease, the Trust Concurrent Lease and any M2 Upgrade Company Lease, any M2 Upgrade Trust Lease and any M2 Upgrade Trust Concurrent Lease."

- (b) clause 8.3 of the M2 Motorway Project Deed is deleted and replaced with the following clause:

"8.3 The Company to keep M2 Motorway open

During the Term, the Company must keep the M2 Motorway open to the public for the continuous passage of vehicles unless:

- (a) *the RTA agrees otherwise in writing; or*
- (b) *it is necessary to close the M2 Motorway because of:*
- (i) *the requirements of any relevant Authority;*
 - (ii) *a Force Majeure Event; or*
 - (iii) *a material threat to the health or safety of M2 Motorway users."*

- (c) clause 14.4 of the M2 Motorway Project Deed is deleted and replaced with the following clause:

"14.4 Termination by the Company and the Trustee

Subject to clause 14.5, the Company and the Trustee may terminate this deed by giving the RTA 30 days' written notice if:

- (a) *because of a breach of a warranty given by the RTA or the Minister in clause 2.10(a), a court makes a Final Determination that the Company or the Trustee may not:*

- (i) *construct, maintain, operate or repair the M2 Motorway; or*
- (ii) *levy on or keep tolls from M2 Motorway users,*

in accordance with the Project Documents;

- (b) *a court makes a Final Determination which prevents the Company or the Trustee from:*

- (i) *constructing, maintaining, operating or repairing the M2 Motorway; or*
 - (ii) *levying on or keeping tolls from M2 Motorway users, in the manner contemplated by the Project Documents (except where the Final Determination is issued as a result of a wrongful fact or default by the Trustee, the Company or their contractors);*
- (c) *the New South Wales Government enacts legislation which prohibits or has the effect of prohibiting the Company or the Trustee from:*
- (i) *constructing, maintaining, operating or repairing the M2 Motorway; or*
 - (ii) *levying on or keeping tolls from M2 Motorway users, in accordance with the Project Documents;*
- (d) *an Authority resumes any part of the Premises and the Company's or the Trustee's ability to:*
- (i) *construct, maintain, operate or repair the M2 Motorway; or*
 - (ii) *levy on and keep tolls from M2 Motorway users, in accordance with the Project Documents is materially adversely affected; or*
- (e) *the Minister or the RTA breaches any obligation under this deed, the Company Lease, the Trust Lease or the Trust Concurrent Lease (other than a breach of the Company Lease which is a result of a breach by the Trustee of the Trust Concurrent Lease) and the Company or the Trustee are prevented from:*
- (i) *constructing, maintaining, operating or repairing the M2 Motorway; or*
 - (ii) *levying on or keeping tolls from M2 Motorway users, in accordance with the Project Documents."*
- (d) The definition of "Term" in clause 1.1 of Exhibit A to the M2 Motorway Project Deed is deleted and replaced with the following definition:
- "Term** *is the period beginning on the 26 May 1997 and ending on 26 May 2046 unless one of the following events occurs:*
- (a) *if the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16.5 per cent per annum during the period from 26 May 1997 to 26 May 2037, the term of this Lease will end (at the option of the Lessor) on 26 May 2037;*

- (b) *if paragraph (a) does not apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from 26 May 1997 to 26 May 2040, the term of this Lease will end (at the option of the Lessor) on 26 May 2040; or*
- (c) *if neither paragraph (a) nor (b) apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from the 26 May 1997 to 26 May 2043, the term of this Lease will end (at the option of the Lessor) on 26 May 2043."*
- (e) The definition of "Concurrent Lease Term" in clause 1.1 of Exhibit C to the M2 Motorway Project Deed is deleted and replaced with the following definition:

"Concurrent Lease Term is the period beginning on 26 May 1997 and ending on 26 May 2046 unless one of the following events occurs:

- (a) *if the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16.5 per cent per annum during the period from 26 May 1997 to 26 May 2037, the term of this Lease will end (at the option of the Lessor) on 26 May 2037;*
- (b) *if paragraph (a) (does not apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from 26 May 1997 to 26 May 2040, the term of this Lease will end (at the option of the Lessor) on 26 May 2040; or*
- (c) *if neither paragraph (a) nor (b) apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from 26 May 1997 to 26 May 2043, the term of this Lease will end (at the option of the Lessor) on 26 May 2043.*
- (f) The definition of "Term" in clause 1.1 of Exhibit D to the M2 Motorway Project Deed is deleted and replaced with the following definition:

"Term is the period beginning on 26 May 1997 and ending on 26 May 2046 unless one of the following events occurs:

- (a) *if the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16.5 per cent per annum during the period from 26 May 1997 to 26 May 2037, the term of this Lease will end (at the option of the Lessor) on 26 May 2037;*

- (b) *if paragraph (a) does not apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from 26 May 1997 to 26 May 2040, the term of this Lease will end (at the option of the Lessor) on 26 May 2040; or*
- (c) *if neither paragraph (a) nor (b) apply and the Company and the Trustee in aggregate derive an amount sufficient to give the Investors (treated as if they were all Notional Initial Investors) a real after tax internal rate of return from the Project in excess of 16 per cent per annum during the period from 26 May 1997 to 26 May 2043, the term of this Lease will end (at the option of the Lessor) on 26 May 2043."*

Schedule 4 Terms of Appointment for Expert

(clause 11.4(f))

To: *[Insert name of Expert]*

By a deed (**M2 Upgrade Project Deed**) dated [] between Roads & Traffic Authority of New South Wales (**RTA**), the Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales (**Minister**) and The Hills Motorway Limited (**Company**) and Hills Motorway Management Limited (**Trustee**) (together, **Hills Motorway**), the Parties agreed to submit disputes that might arise between them to an expert for determination through an expert determination process as established by the Project Deed, the Rules for Expert Determination Process (**Rules**) set out in clause 11.5 of the M2 Upgrade Project Deed, and the Code of Conduct for an Expert (**Code of Conduct**) which forms Appendix 1 to this letter.

A dispute has arisen between the Parties. A short summary of the dispute is attached to this letter (**Dispute**).

The Parties agree to appoint you

of

as the sole expert to determine the dispute in accordance with the above procedures. The Parties agree to pay you [\$] per hour (plus GST at the applicable rate).

The determination of the dispute must be completed within 30 days of the date of your acceptance of this appointment, or such extended period as the Parties may agree.

The Parties agree that you will not be liable in any way arising out of or in connection with the determination of the dispute, except in the case of fraud on your part.

Dated

.....

For RTA

.....

For the Company

.....

For the Minister

.....

For the Trustee

.....

For the Expert

Appendix 1 - Code of Conduct for an Expert

1. The function of the expert is to make a determination on the dispute or difference in accordance with the Rules in clause 11.5 of the M2 Upgrade Project Deed (or any other rules which the expert in his or her absolute discretion decides), this code of conduct and the letter of appointment of the expert.
2. The expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the above rules and may require any further information or documentation from the Parties which is reasonably necessary to determine the dispute or difference.
3. The expert must decide whether a conference is necessary to receive further information. The expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters.
4. The expert is not bound by the rules of evidence, may receive information in any matter the expert thinks fit (including as an inquisitor), and must meet the requirements of procedural fairness.
5. The expert must disclose to both Parties all information and documents received. If a Party fails to make a written submission or appear at any conference after having received the appropriate notice, the expert may continue with the process. Subject to this, discussions with the expert must only take place in the presence of both Parties.
6. The expert must reach a determination on the basis of the information received from the Parties and on the basis of the expert's own expertise. The decision must be reached as an expert and not as an arbitrator. The expert's determination must be made as soon as possible and in any event within the period set out in the letter of appointment of the expert. The determination, signed by the expert, must be notified immediately to the Parties in writing.
7. The expert must keep all information received confidential and must not disclose that information without the prior written consent of the Parties.
8. The expert must inform the Parties immediately of any circumstances that might adversely affect the expert's capacity to act independently or impartially. The expert, in those circumstances, must terminate the proceedings, unless the Parties agree otherwise.

Schedule 5 Expedited Arbitration Rules

(clause 11.11)

1. Arbitration

1.1 The Party referring the Dispute to arbitration (**Claimant**) must within 5 Business Days of giving notice under clause 11.9(a) of the Deed, give to the other Party (**Respondent**) a notice in writing (**Arbitration Notice**). The Arbitration Notice must set out, in brief, the following matters:

- (a) the nature of the Dispute;
- (b) the matters of liability in respect of which the Claimant seeks relief;
- (c) the relief sought; and
- (d) the basis or bases of such liability.

1.2 The Respondent must, within 5 Business Days after receipt of the Arbitration Notice, give to the Claimant a written reply (**Reply**) which sets out the following matters:

- (a) any responses it may have in respect of the matters contained in the Arbitration Notice;
- (b) any counter-contentions and the basis or bases of such counter-contentions; and
- (c) the relief sought (if any).

2. Pleadings

2.1 Within 15 Business Days of the Reply, the Claimant must deliver to the Respondent its statement of contentions.

2.2 Within 15 Business Days of the date for delivery of the contentions, the Respondent must deliver to the Claimant a response to such contentions and any counter-contentions it wishes to make.

2.3 Within 10 Business Days of the date for delivery of the response and any counter-contentions, the Claimant must deliver to the Respondent any response to the counter-contentions and any reply to the response to the contentions.

3. Evidence

3.1 Within 40 Business Days of close of pleadings each Party must deliver all evidence-in-chief (including sworn witness statements and documents) in support of its contentions or counter-contentions that it wishes to rely upon.

3.2 Within 40 Business Days of the date for delivery of the evidence-in-chief, each Party must deliver all evidence (including sworn witness statements and documents) in response to the evidence-in-chief that it wishes to rely upon.

- 3.3 Within 20 Business Days of the date for delivery of the response to the evidence-in-chief, each Party must deliver all evidence (including sworn witness statements and documents) in reply to the evidence in response that it wishes to rely upon.
- 3.4 Within 15 Business Days of the date for delivery of the evidence in reply, each Party must deliver all expert reports in chief upon in support of its contentions or counter-contentions that it wishes to rely upon.
- 3.5 Within 30 Business Days of the date for delivery of the expert reports in chief, each Party must deliver all expert reports in response that it wishes to rely upon.

4.1 Discovery

- 4.1 Save as set out in this section 4, neither Party is entitled to discovery.
- 4.2 Within 10 Business Days of the close of pleadings, each Party must provide to the other Parties a list of all documents in its possession, custody or power relevant to the issues in the Dispute.
- 4.3 Within 10 Business Days of the receipt of the other Parties' list of documents each Party may make a request for discovery of any specified document or class of documents. Any such request must state why discovery of such document or documents is necessary for the fair and expeditious resolution of the Dispute.
- 4.4 The Party receiving a request for discovery must comply with the request within 10 Business Days.
- 4.5 If the production of any of the documents requested is objected to, or no documents are produced, the requesting Party may make an application to the arbitrator to determine whether, and if necessary how, such documents should be produced.

5. Powers of the Arbitrator

- 5.1 The arbitrator must act fairly and impartially and give each Party a reasonable opportunity to be heard. Subject to clause 11.11(b) of the Deed, the arbitrator must determine every Dispute according to law.
- 5.2 Each Party must comply with all requirements of this section and the orders and directions of the arbitrator within the time-limits prescribed. A Party may not rely upon any pleading, evidence or request for discovery delivered or amended after the time-limits prescribed, except with the leave of the arbitrator. The arbitrator may only grant such leave where:
- (a) it is satisfied that there are adequate grounds for the leave;
 - (b) it is satisfied that granting leave in such circumstances would not prejudice the rights of the other Party; and
 - (c) it is satisfied that granting leave in such circumstances would not have a substantial detrimental effect on the expeditious and cost-effective resolution of the Dispute.
- 5.3 If a Party fails, without the leave of the arbitrator, to comply with any requirement of this section or any order or direction of the arbitrator, within the time-limits prescribed, the arbitrator:
- (a) may continue the arbitration of the Dispute in spite of such failure;

- (b) may direct that the Party in default is not entitled to rely on any matter, including any allegation or material, which was the subject of the requirement, order or direction;
- (c) may draw any adverse inferences from such failure as he or she thinks fit;
- (d) may make any procedural or other order or direction to ensure that the arbitration of the Dispute is carried out in as fair, cost-efficient and expeditious a manner as is possible in the circumstances; and
- (e) may make any order as to payment of costs of the arbitration of the Dispute in consequence of such failure.

5.4 The arbitrator may extend any prescribed time-limit if it is satisfied that this is required for the fair or efficient resolution of the Dispute.

6. Conduct of the hearing

6.1 The hearing of the evidence will be for a maximum period of two weeks. The arbitrator will sit for 5 days per week.

6.2 Each Party must have a maximum of 100 hours to put its case including opening its case, leading evidence, cross-examining and re-examining witnesses. Subject to the other provisions of this section each Party may utilise the time allocated to it at the hearing of the evidence in any manner it thinks appropriate for the presentation of its case.

6.3 There will be no oral evidence-in-chief without the leave of the arbitrator.

6.4 The rules of evidence will not apply to the arbitration.

6.5 The weight that will be given to any evidence, of whatever nature and however presented, is wholly a matter for the discretion and decision of the arbitrator. In exercising his or her discretion, the arbitrator must not be in any way limited by any particular evidential or procedural rule (in particular the rule that evidence that is uncontradicted is to be accepted).

6.6 Following the close of the hearing of the evidence, the Parties and the arbitrator must sit again within 10 Business Days. At that time, each Party must make any oral submissions. Each Party will be limited to one day for such oral submissions.

6.7 The arbitrator may limit the length of any part of the oral evidence or submissions notwithstanding the time limits set out in this section.

7. Award

7.1 The arbitrator must render an award in respect of the Dispute.

7.2 The arbitrator must issue the relevant award within 40 Business Days of the completion of the oral submissions. The award must be reasoned.

7.3 The award will be final and binding.

7.4 To the extent possible by law, and in particular the *Commercial Arbitration Act 1984* (NSW), the Parties agree that there will be no right of appeal from the award of the arbitrator.

Schedule 6 Cost Payment Schedule

(clauses 1.1 and 9)

The Quarterly Instalments to be paid to the RTA (under clauses 9.5(c) and 9.5(d)) are specified in the table below. The instalments are specified here in nominal terms (i.e. out-turn dollars)

The process for applying the payment profile for the instalments link to the RTA Default Step-In Costs (under clause 9.5(a)).

Part 1

Period Number (N)	Quarter Ending	Quarterly Instalment - ie QI (Nominal Values - \$000)			
		Windsor Road Section	Herring Road Section	Main Plaza & Pennant Hills Section	Total (if all Sections completed)
0	31-Dec-09	-	-	-	-
1	31-Mar-10	-	-	-	-
2	30-Jun-10	-	-	-	-
3	30-Sep-10	-	-	-	-
4	31-Dec-10	-	-	-	-
5	31-Mar-11	-	-	-	-
6	30-Jun-11	-	-	-	-
7	30-Sep-11	-	-	-	-
8	31-Dec-11	-	-	-	-
9	31-Mar-12				
10	30-Jun-12				
11	30-Sep-12				
12	31-Dec-12				
13	31-Mar-13				
14	30-Jun-13				
15	30-Sep-13				
16	31-Dec-13				
17	31-Mar-14				
18	30-Jun-14				
19	30-Sep-14				
20	31-Dec-14				
21	31-Mar-15				
22	30-Jun-15				

Period Number (N)	Quarter Ending	Quarterly Instalment - ie QI (Nominal Values - \$000)			
		Windsor Road Section	Herring Road Section	Main Plaza & Pennant Hills Section	Total (if all Sections completed)
23	30-Sep-15				
24	31-Dec-15				
25	31-Mar-16				
26	30-Jun-16				
27	30-Sep-16				
28	31-Dec-16				
29	31-Mar-17				
30	30-Jun-17				
31	30-Sep-17				
32	31-Dec-17				
33	31-Mar-18				
34	30-Jun-18				
35	30-Sep-18				
36	31-Dec-18				
37	31-Mar-19				
38	30-Jun-19				
39	30-Sep-19				
40	31-Dec-19				
41	31-Mar-20				
42	30-Jun-20				
43	30-Sep-20				
44	31-Dec-20				
45	31-Mar-21				
46	30-Jun-21				
47	30-Sep-21				
48	31-Dec-21				
49	31-Mar-22				
50	30-Jun-22				
51	30-Sep-22				
52	31-Dec-22				
53	31-Mar-23				

Period Number (N)	Quarter Ending	Quarterly Instalment - ie QI (Nominal Values - \$000)			
		Windsor Road Section	Herring Road Section	Main Plaza & Pennant Hills Section	Total (if all Sections completed)
54	30-Jun-23				
55	30-Sep-23				
56	31-Dec-23				
57	31-Mar-24				
58	30-Jun-24				
59	30-Sep-24				
60	31-Dec-24				
61	31-Mar-25				
62	30-Jun-25				
63	30-Sep-25				
64	31-Dec-25				
65	31-Mar-26				
66	30-Jun-26				
67	30-Sep-26				
68	31-Dec-26				
69	31-Mar-27				
70	30-Jun-27				
71	30-Sep-27				
72	31-Dec-27				
73	31-Mar-28				
74	30-Jun-28				
75	30-Sep-28				
76	31-Dec-28				
77	31-Mar-29				
78	30-Jun-29				
79	30-Sep-29				
80	31-Dec-29				
81	31-Mar-30				
82	30-Jun-30				
83	30-Sep-30				
84	31-Dec-30				

Period Number (N)	Quarter Ending	Quarterly Instalment - ie QI (Nominal Values - \$000)			
		Windsor Road Section	Herring Road Section	Main Plaza & Pennant Hills Section	Total (if all Sections completed)
85	31-Mar-31				
86	30-Jun-31				
87	30-Sep-31				
88	31-Dec-31				
89	31-Mar-32				
90	30-Jun-32				
91	30-Sep-32				
92	31-Dec-32				
93	31-Mar-33				
94	30-Jun-33				
95	30-Sep-33				
96	31-Dec-33				
97	31-Mar-34				
98	30-Jun-34				
99	30-Sep-34				
100	31-Dec-34				
101	31-Mar-35				
102	30-Jun-35				
103	30-Sep-35				
104	31-Dec-35				
105	31-Mar-36				
106	30-Jun-36				
107	30-Sep-36				
108	31-Dec-36				
109	31-Mar-37				
110	30-Jun-37				
111	30-Sep-37				
112	31-Dec-37				
113	31-Mar-38				
114	30-Jun-38				
115	30-Sep-38				

Period Number (N)	Quarter Ending	Quarterly Instalment - ie QI (Nominal Values - \$000)			
		Windsor Road Section	Herring Road Section	Main Plaza & Pennant Hills Section	Total (if all Sections completed)
116	31-Dec-38				
117	31-Mar-39				
118	30-Jun-39				
119	30-Sep-39				
120	31-Dec-39				
121	31-Mar-40				
122	30-Jun-40				
123	30-Sep-40				
124	31-Dec-40				
125	31-Mar-41				
126	30-Jun-41				
127	30-Sep-41				
128	31-Dec-41				
129	31-Mar-42				
130	30-Jun-42				
131	30-Sep-42				
132	31-Dec-42				
133	31-Mar-43				
134	30-Jun-43				
135	30-Sep-43				
136	31-Dec-43				
137	31-Mar-44				
138	30-Jun-44				
139	30-Sep-44				
140	31-Dec-44				
141	31-Mar-45				
142	30-Jun-45				
143	30-Sep-45				
144	31-Dec-45				
145	31-Mar-46				
146	30-Jun-46				

Part 2

Calculation of Step-in Costs Owed to the RTA

At any given time, the debt owed by Hills Motorway for the RTA Default Step-In Costs is calculated as:

$$SI_N = (SI_{N-1} * (1+i)) + RC_N - (I_N * CC_N)$$

Where:

$SI_N =$ The RTA Default Step-In costs owed to the RTA in Quarter N. This process calculates the Quarter N Step-In Costs owed to the RTA at a given point in time.

$(SI_{N-1} * (1+i)) =$ With the exception of Quarter 0, the RTA Default Step-In Costs owed to the RTA in Quarter N-1 (i.e. previous quarter) multiplied by $(1 + \text{Deferred Interest Rate on a quarterly basis})$. Note that the Deferred Interest Rate on the quarterly basis is 2.59938% (based on the rate of 10.81% per annum).

$RC_N =$ If applicable to Quarter N, a RTA Default Step-In Cost incurred by RTA during Quarter N.

$I_N =$ $\min[AF_N, QI_N, SI_{N-1} * (1 + i)] + DS_N$

I_N is an Instalment or repayment in Quarter N for part of the debt due and payable from Hills Motorway to RTA and payable to RTA.

The Instalment paid to the RTA is dependent on the Available Funds in Quarter N.

If there are sufficient Available Funds AF_N , the Instalment will be the Quarterly Instalment QI_N shown in Part 1 of this Schedule (the sum of the Completed Sections are relevant to the Quarterly Instalment amount).

The Instalment can never be greater than the outstanding balance of the RTA Default Step-In Costs owed to RTA, including accrued interest.

In addition, Hills Motorway can pay to RTA a discretionary sum DS_N over and above the Quarterly Instalment to reduce the debt owed to RTA.

If there are insufficient Available Funds, this can have two implications on the calculation of RTA Default Step-In Costs in Quarter N and Quarter N + 1:

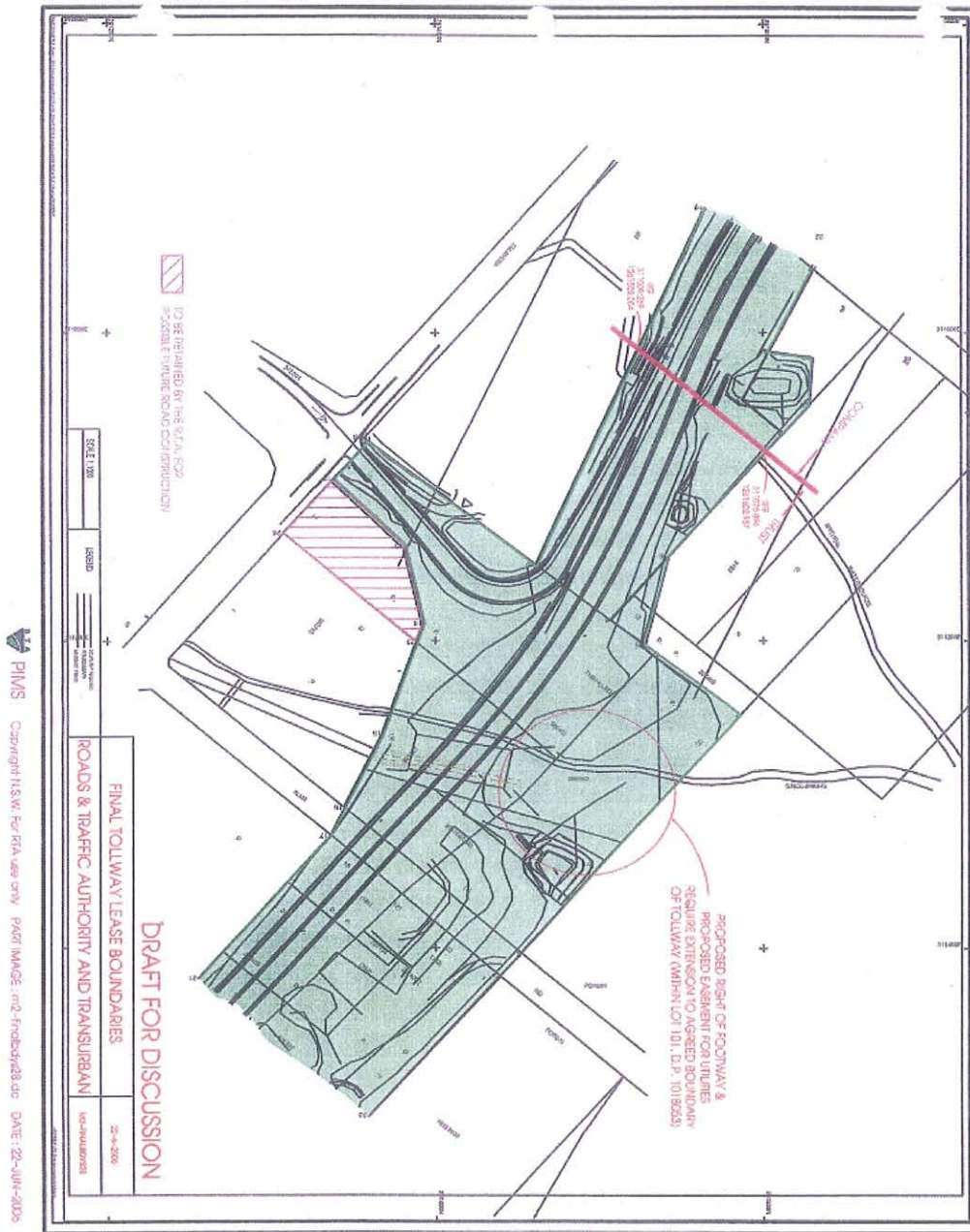
- The Quarterly Instalment that can be paid in Quarter N will be reflected as a part-payment received by RTA in Quarter N. The amount not paid to RTA is recorded as an Unpaid Quarterly Instalment and is not reflected within this calculation. The absence of this portion of the payment during Quarter N impacts on the debt balance used in Quarter N + 1 (i.e. RTA Default Step-In Costs owed to RTA) and the level of interest expense in Quarter N + 1.
- If no part-payment is made towards the Quarterly Instalment the full amount of the Quarterly Instalment (in Part 1 of this Schedule) is recorded as an Unpaid Quarterly Instalment and not reflected in this

calculation. The absence of any form of payment during Quarter N impacts on the debt balance in Quarter N + 1 (i.e. the RTA Default Step-In Costs owed to RTA) and the level of interest expense in Quarter N + 1.

$CC_N =$ Refers to Construction Completion of Stage 3. If Stage 3 has been achieved during Quarter N, this flag is set at 1 and an Instalment is payable from Hills Motorway to RTA in Quarter N. If Stage 3 has not yet been achieved by Quarter N, the flag is set at 0 and an Instalment is not applicable in Quarter N. In this case, the Instalment refers to either a Quarterly Instalment or an Unpaid Quarterly Instalment in Quarter N.

Schedule 7 Company Road and Trust Road

For the purposes of this Schedule 7, regard shall only be had to the line identifying the boundary between the Company Road and Trust Road. Information relating to the proposed lease boundaries, right of footways, easements, proposed extensions or the retention of land is not relevant to the Schedule and should be disregarded



Each attorney executing this Deed states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Executed as a deed.

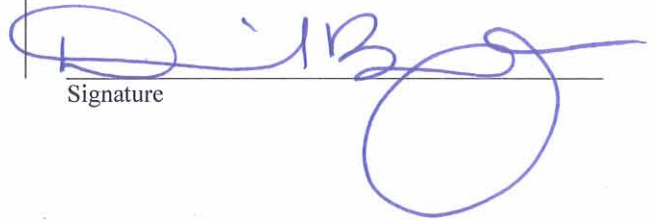
Signed, sealed and delivered by The Honourable Minister for Roads for and on behalf of Her Majesty Queen Elizabeth the Second in right of the State of New South Wales in the presence of:



Signature of witness

Stuart Michael Cosgriff

Full name of witness

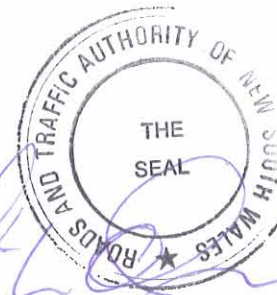


Signature

The Seal of the Roads and Traffic Authority of New South Wales was hereunto affixed by

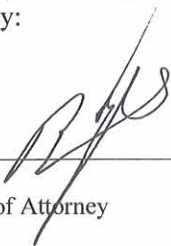
STEPHEN FRANCES O'BRIEN

being an authorised signatory:



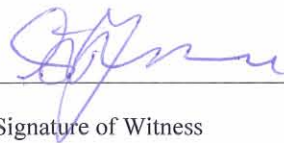
Signature

Signed sealed and delivered for The Hills Motorway Limited, ABN 28 062 329 828 by its attorney:



Signature of Attorney

RAYMOND BOLZAR
Name of Attorney in full



Signature of Witness

STEPHEN BYRNE
Name of Witness in full


**Signed sealed and delivered for Hills
Motorway Management Limited, ABN 89
064 687 645** in its capacity as trustee of the Hills
Motorway Trust by its attorney:



Signature of Attorney

Andrew Head

Name of Attorney in full



Signature of Witness

STEPHEN BYRNE

Name of Witness in full