

COMMERCIAL IN CONFIDENCE

Delivery Funding Deed

WestConnex Stage 3A

Roads and Maritime Services
RMS

WCX M4-M5 Link PT Pty Ltd
Project Trustee

WCX M4-M5 Link AT Pty Ltd
Asset Trustee

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Delivery Funding Deed

This Deed is made on

2018

Parties

Roads and Maritime Services (ABN 76 236 371 088) of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**RMS**)

WCX M4-M5 Link PT Pty Ltd (ACN 624 153 788) in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Project Trust (ABN 67 667 191 375) of Level 33, 259 George Street, Sydney, New South Wales, 2000 (the **Project Trustee**).

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

Background

- A. RMS is a statutory body representing the Crown in the right of the State of New South Wales.
- B. Subject to the execution of this deed, the Asset Trustee will enter into a D&C Commitment Deed with the Contractor to enable mobilisation and detailed construction planning for the Main Tunnel Works.
- C. This deed sets out arrangements relevant to the funding by RMS of:
 - (a) costs and expenses to be incurred by the Trustees during the Term;
 - (b) project development costs to be incurred by the Asset Trustee in accordance with the D&C Commitment Deed during the Term; and
 - (c) certain break costs which may be incurred by Trustees following expiry of the Term.

Operative provisions

1. Definitions and interpretation

1.1 Project Deed definitions

Definitions in the Project Deed apply in this deed unless the relevant term is defined in this deed.

1.2 Definitions

In this deed:

Approved Budget means Annexure A, as it may be varied in accordance with this deed.

Break Costs means:

- (a) Liability of the Principal (as that term is defined in the D&C Commitment Deed) which has arisen pursuant to clause 5.1(a) (*Termination by the Principal*) or 5.2 (*Longstop termination*) of the D&C Commitment Deed; or

- (b) other costs, expenses or Liabilities which a Trustee has certified have been reasonably and properly incurred as a consequence of the termination of the D&C Commitment Deed including those referred to in the Approved Budget and limited to the aggregate amount of Stage 3 Trustee Costs in the Approved Budget.

Commitment Deed Payment Claim has the meaning given to it in clause 6.2(b).

Delivery Funding Account means each of the following bank accounts maintained in accordance with clause 5:

- (a) bank account number [REDACTED] held in the name of the Project Trustee with the Account Bank; and
- (b) bank account number [REDACTED] held in the name of the Asset Trustee with the Account Bank,

or such other bank account held in the name of the Asset Trustee or the Project Trustee with the Account Bank as may be designated a "Delivery Funding Account" for the purposes of this deed.

Delivery Funding Account Balance means, for a Delivery Funding Account, on any day, the balance standing to the credit of that Delivery Funding Account on that day.

Effective Date means the date of the Project Deed.

Excess RMS Payment means, for any month, any amount calculated under (and referred to in a credit note issued under) clause 7.1(d) for that month.

Excluded Purposes means any purpose which is not related to the provision of Project Delivery Services by the Asset Trustee or the Project Trustee.

Expiry Date has the meaning given in clause 2.

Funding Payments means each payment which RMS is required to make under clause 6.2 or 6.5 of this deed.

Funding Payment Claim means a claim, substantially in the form set out in Schedule 1 and otherwise made in compliance with clause 6.2(c), and delivered to RMS under clause 6.2(b).

Initial Funding Amount means \$ [REDACTED].

Maximum Funding Amount means \$ [REDACTED] (excluding GST).

Net Funding Claim Amount means, in relation to a Funding Payment Claim, the amount referable to that Funding Payment Claim calculated in accordance with clause 6.2(d) and subject to clause 6.7.

Project Deed means the deed entitled "WestConnex M4-M5 Link Project Deed" between RMS, the Project Trustee and the Asset Trustee and dated on or about the date of this deed.

Project Delivery Services means the development of, and early aspects of the delivery of, the Project by the Asset Trustee and the Project Trustee in accordance with the Project Deed.

Public Accountability Body means any or all of the NSW Auditor-General, the New South Wales Ombudsman, the New South Wales Privacy Commissioner and the Independent Commission Against Corruption.

Stage 3 Trustee Costs means costs and expenses of the Asset Trustee or the Project Trustee incurred during the Term and which are within the aggregate amount set out in the Approved Budget.

Term means the duration of this deed as determined in accordance with clause 2.

Varied Budget means an Approved Budget that is varied by a Budget Variation Request approved by RMS under clause 7.2(c)(i).

1.3 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) **"includes"** in any form is not a word of limitation;

(k) a reference to **"\$"** or **"dollar"** is to Australian currency;

(l) the calculation of interest under this deed is based on a 365 day year and the number of days elapsed for the purposes of that calculation; and

(m) a reference to a **"month"** is to a calendar month.

1.4 No bias against drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.5 Project Document

The parties agree that this deed is a Project Document for the purposes of the Project Deed.

1.6 Business Day

If a 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.

2. Term

This deed will commence on the Effective Date and, without prejudice to clause 10.4(a), will continue in full force and effect until the date falling 6 months after the date of the D&C Commitment Deed (**Expiry Date**) unless it is terminated earlier in accordance with its terms (**Term**).

3. Objectives and guiding principles

3.1 Mutual obligations

Each party must:

- (a) cooperate with the other party in relation to the performance of each party's respective obligations under this deed; and
- (b) provide the other party with all assistance reasonably requested in writing by the other party to facilitate the performance of each party's respective obligations under this deed.

3.2 Unfettered discretion

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RMS to exercise any of its functions and powers pursuant to any Law.
- (b) The Asset Trustee acknowledges and agrees that, without limiting clause 3.2(a), anything which RMS does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by RMS (including a breach of contract) under or in connection with this deed and will not entitle the Asset Trustee to make any Claim against RMS.
- (c) The parties agree that clauses 3.2(a) and 3.2(b) are taken not to limit any Liability which RMS would have had to the Asset Trustee under this deed as a result of a breach by RMS of a term of this deed but for clauses 3.2(a) and 3.2(b).

3.3 Relationship of parties

- (a) Except to the extent otherwise provided in this deed, nothing in this deed will be construed as creating a relationship of employment, partnership, trust, joint venture or agency between the parties or as imposing any fiduciary duties on either party in relation to the other.
- (b) Neither the Asset Trustee or the Project Trustee (including their respective officers, employees, agents and contractors, Related Bodies Corporate and the officers, employees, agents and contractors of such Related Bodies Corporate):
 - (i) is an officer, employee, partner, agent of, or joint venturer with, RMS and must not represent or allow itself to be represented as such; and

- (ii) has authority or power to and must not purport to bind RMS or make representations on behalf of RMS.

3.4 Key obligations of the parties

- (a) Each party must perform its obligations under this deed:
 - (i) with due care and skill;
 - (ii) in a timely and professional manner; and
 - (iii) in accordance with all applicable Laws.
- (b) The Trustees must exercise due economy in exercising their obligations in connection with committing or incurring expenditure.

4. Project Delivery Services

4.1 Funding Payments are in consideration for Project Delivery Services

RMS's obligations under this deed are given in consideration of the provision by the Asset Trustee of Project Delivery Services for the benefit of RMS.

4.2 Non-exclusive

Nothing in this deed is to be taken to imply that a party may not acquire or provide services of the same kind as the Project Delivery Services at any time from or to any other person.

5. Establishment and operation of Delivery Funding Accounts

- (a) With effect from the Effective Date, each Trustee must maintain its Delivery Funding Account.
- (b) Each Delivery Funding Account must be denominated in Australian dollars.
- (c) The Trustees must ensure that amounts standing to the credit of their respective Delivery Funding Account attract interest income at a market rate and that the amount of any such interest is regularly credited to the relevant Delivery Funding Account in accordance with the standard terms of operation of that account.
- (d) Any balance standing to the credit of a Delivery Funding Account must remain in that account and, except as required or permitted under this deed, must not be removed, transferred or invested in any way.
- (e) Each Trustee may (but is not obliged to) close its Delivery Funding Account at any time after the first day after the end of the Term on which the Delivery Funding Account Balance for the relevant Delivery Funding Account is zero.

6. Funding Payments

6.1 RMS to make Funding Payments

- (a) RMS will make Funding Payments to the Asset Trustee and the Project Trustee in accordance with, and subject to the terms of, this deed.
- (b) Notwithstanding anything to the contrary in this deed, and without limiting clause 6.5, the Trustees have no Claim against RMS for, and release RMS from, all Claims

for costs, expenses, Losses and Liabilities incurred by the Trustees for, or arising out of or in connection with:

- (i) an Excluded Purpose; or
- (ii) any breach of clause 3.4 by a Trustee.

6.2 Payment for Project Delivery Services

(a) On the date of this deed, RMS must pay the Asset Trustee and the Project Trustee an amount which is in aggregate equal to the Initial Funding Amount, with such payment being split so that ■% of the Initial Funding Amount is paid to the Asset Trustee and ■% of the Initial Funding Amount is paid to the Project Trustee (or on the basis that the Initial Funding Amount will be split between the Asset Trustee and the Project Trustee in such other proportions as may be notified by the Asset Trustee to RMS for this purpose prior to the date of this deed).

(b) At any time:

- (i) within 5 Business Days after the later of:
 - A. each date during the Term on which the Asset Trustee receives a payment claim from the Contractor under clause 4.2 (*Payment*) of the D&C Commitment Deed; and
 - B. the 28th of each month during the Term during which the Asset Trustee receives such a payment claim from the Contractor,

(a **Commitment Deed Payment Claim**); or

(ii) at any time during the 180 day period after the end of the Term,

the Asset Trustee may deliver to RMS a Funding Payment Claim setting out (and, in the case of paragraph A, attaching):

- A. (if applicable) a pro forma tax invoice (attaching the relevant Commitment Deed Payment Claim) for:
 - 1) the amount claimed by the Contractor under the relevant Commitment Deed Payment Claim; and
 - 2) the amount of GST which the Asset Trustee projects will be payable in respect of that Commitment Deed Payment Claim;
- B. details (including a breakdown of accounts payable, payroll and other costs and expenses, with copies of invoices) of any Stage 3 Trustee Costs which have been paid or incurred by the Asset Trustee or the Project Trustee, or which have been recharged to a Trustee by SMC, and which have not previously been included within a Net Funding Claim Amount paid by RMS under this deed; and
- C. details of any Break Costs which are due and payable by the Asset Trustee or the Project Trustee (if any) at that time.

(c) Each Funding Payment Claim delivered by the Asset Trustee to RMS must:

- (i) be addressed to RMS and identify this deed;

- (ii) attach a tax invoice within the meaning of the GST law for Stage 3 Trustee Costs referred to in that Funding Payment Claim;
 - (iii) attach a pro forma tax invoice as referred to under clause 6.2(b)(ii)A;
 - (iv) attach a copy of any credit note issued under clause 7.1(d) in respect of the immediately preceding calendar month;
 - (v) set out the net amount that RMS is required to pay under the Funding Payment Claim, as calculated under clause 6.2(d) (the **Net Funding Claim Amount**); and
 - (vi) identify the amount of the relevant Net Funding Claim Amount which is payable to the Project Trustee and the Asset Trustee respectively, and the Delivery Funding Account into which the relevant portions of the Net Funding Claim Amount should be paid.
- (d) The Net Funding Claim Amount for a Funding Payment Claim will be an amount calculated by the Asset Trustee as:
- $$A + B + C - D$$
- where:
- A = the aggregate of the amount of the relevant Commitment Deed Payment Claim and the GST which the Asset Trustee projects will be payable in respect of that Commitment Deed Payment Claim (as set out in the relevant pro forma tax invoice delivered under clause 6.2(b)(ii)A);
 - B = the aggregate amount of Stage 3 Trustee Costs referred to in the relevant Funding Payment Claim;
 - C = the aggregate amount of Break Costs (if any) referred to in the relevant Funding Payment Claim; and
 - D = any Excess RMS Payment in respect of the immediately preceding calendar month.
- (e) Subject to clause 6.7, RMS must pay the Net Funding Claim Amount under a Funding Payment Claim within 10 Business Days after receipt of that Funding Payment Claim.

6.3 Repayment to RMS on early termination

If the Term ends prior to the occurrence of Financial Close, then, without prejudice to clause 6.5, as soon as practicable after RMS makes payment under clause 6.2(e) in respect of the Funding Payment Claim made in respect of the Break Costs payable by the Asset Trustee and the Project Trustee as a consequence of termination of the D&C Commitment Deed, the Asset Trustee and the Project Trustee must procure that:

- (a) the aggregate of the Delivery Funding Account Balances at that time;
- less
- (b) the aggregate of any Stage 3 Trustee Costs and Break Costs which have not yet been paid,
- are transferred to RMS.

6.4 Repayment to RMS at Financial Close

If the Term ends on the date of Financial Close:

- (a) without prejudice to clause (b), the Asset Trustee and the Project Trustee must, as soon as practicable thereafter, procure that:
 - (i) the aggregate of the Delivery Funding Account Balances at that time;
less
 - (ii) any:
 - A. amounts under the D&C Commitment Deed; or
 - B. Stage 3 Trustee Costs,
which have not yet been paid,are transferred to RMS; and.
- (b) if the date of Financial Close falls between the date on which a Funding Payment Claim is submitted to RMS under this deed and the date on which a withdrawal from the Delivery Funding Accounts corresponding to the Net Funding Claim Amount paid by RMS under this deed with respect to that Funding Payment Claim has been made by the Asset Trustee under clause 7.3(a) for payment to the Contractor, the Asset Trustee and the Project Trustee must, as soon as practicable after it is established that an Excess RMS Payment exists in respect of the relevant month, procure that the amount of that Excess RMS Payment is either:
 - (i) transferred to RMS; or
 - (ii) (with the consent of RMS) transferred to the State Works Contractor in partial satisfaction, or on account of, RMS' obligations to pay amounts under the Main Tunnel State Works Deed.

6.5 RMS funding for Post-Termination Claims

- (a) If the Term ends prior to the date of Financial Close then, at any time thereafter, a Trustee may deliver to RMS a written request that RMS make payment to a Trustee in an amount necessary to reimburse any member of the Group for any cost, expense, Loss or Liability it incurs under or in connection with any Claim made against it by the Contractor (a **Post-Termination Claim**).
- (b) Any request issued by a Trustee under clause 6.5(a) must:
 - (i) be addressed to RMS and identify this deed;
 - (ii) set out reasonable details of the relevant Post-Termination Claim;
 - (iii) set out details of the relevant amount of costs, expenses, Losses or Liabilities to which the request relates; and
 - (iv) identify the amount which RMS is required to pay, and the Delivery Funding Account or Delivery Funding Accounts into which the relevant amount must be paid.
- (c) No Trustee may make any claim against RMS in a request issued under clause 6.5(a) above, and the Trustees release RMS from all Claims for costs, expenses, Losses and Liabilities incurred by the Trustees to the Contractor for, or arising out

of or in connection with any Post-Termination Claim which has been finally determined to be due to any breach of contract, breach of a fiduciary duty, misleading or deceptive conduct, negligent act or omission or fraudulent act or omission of a Trustee.

- (d) No Trustee may make any claim against RMS under this clause 6.5 in respect of an amount due from a Trustee following settlement of a Post-Termination Claim unless RMS has been given prior written notice of the proposed terms of settlement of that Post-Termination Claim and has given its prior written consent to the terms of the relevant settlement. RMS must act reasonably and without undue delay in considering any request for consent under this clause 6.5(d).
- (e) Subject to clauses 6.5(c) and 6.5(d) and to clause 6.7, RMS must pay any amount claimed by a Trustee under in a request issued under clause 6.5(a) within 10 Business Days after receipt of that request.

6.6 Payment mechanics

Each payment made by RMS under this clause 6 must be made:

- (a) in Australian dollars;
- (b) in immediately available funds;
- (c) by payment or transfer into the Delivery Funding Account as nominated under clause 6.2(a), in the relevant Funding Payment Claim or in the relevant claim under clause 6.5 for value on the due date; and
- (d) without (and free and clear of any deduction for) set-off or counterclaim (except to the extent of a deduction made pursuant to this clause 6).

6.7 Maximum Funding Amount

The maximum aggregate amount of Funding Payments which RMS may be required to pay under this deed is an amount equal to the aggregate of:

- (a) the Maximum Funding Amount; and
- (b) any amount of GST paid by RMS in connection with any Funding Payment,

and any:

- (c) Net Funding Claim Amount payable by RMS under this deed; and
- (d) amount payable by RMS under clause 6.5,

will be reduced by any amount necessary to ensure that the aggregate of (x) the Maximum Funding Amount and (y) any amount of GST paid by RMS in connection with any Funding Payment is not exceeded.

7. Withdrawals from the Delivery Funding Accounts

7.1 Payment certificates, tax invoices and credit notes

- (a) Within 5 Business Days of submitting a Funding Payment Claim to RMS under clause 6.2(b), the Asset Trustee must submit to RMS a tax invoice within the meaning of the GST law reflecting the amounts set out in the pro forma tax invoice attached to that Funding Payment Claim in accordance with clause 6.2(c)(iii).

- (b) As soon as practicable after the D&C Independent Certifier provides a payment statement in respect of a payment claim made under the D&C Commitment Deed, the Asset Trustee will send a copy of that payment statement to RMS.
- (c) On receipt of a tax invoice from the Contractor under the D&C Commitment Deed, the Asset Trustee must provide a copy of that tax invoice to RMS.
- (d) If, in any month:
 - (i) the amount withdrawn from the Delivery Funding Account under clause 7.3(a) and paid to the Contractor under the D&C Commitment Deed;
 is less than:
 - (ii) the gross amount referred to in the corresponding pro forma tax invoice delivered under clause 6.2(b)(ii)A for that month,
 (the amount by which the amount referred to in paragraph (ii) above exceeds the amount referred to in paragraph (i) above being the **Excess RMS Payment** for the relevant month) the Asset Trustee must, within 5 Business Days of making the relevant withdrawal from the Delivery Funding Account for payment to the Contractor, submit to RMS a credit note setting out the amount of the relevant Excess RMS Payment (which credit note must include a break down to show the amount of the Excess RMS Payment that is referable to GST).

7.2 Budget Variation

- (a) At any time during the Term, the Asset Trustee may propose a variation to an Approved Budget by submitting a written request to RMS in accordance with this clause 7.2 (**Budget Variation Request**).
- (b) The Budget Variation Request must:
 - (i) specify why the variation is being sought; and
 - (ii) provide details of the proposed variation to the Approved Budget and a breakdown of the costs relating to the variation (to a level of detail equivalent to that provided in the Approved Budget at the date of this deed).
- (c) Within 5 Business Days of receipt of a Budget Variation Request under clause 7.2(a), RMS must notify the Asset Trustee that it:
 - (i) approves the Budget Variation Request; or
 - (ii) does not approve the Budget Variation Request.
- (d) If RMS gives a notice under clause 7.2(c)(i), the Varied Budget will take effect as the Approved Budget as and from the date of the notice.
- (e) If RMS gives a notice under clause 7.2(c)(ii), it must specify in that notice the parts of the Budget Variation Request that require amendment.
- (f) Within 5 Business Days of receipt of a notice under 7.2(c)(ii), the Asset Trustee must review and resubmit the Budget Variation Request (**Amended Budget Variation Request**) to RMS.
- (g) Clauses 7.2(c) to 7.2(f) will apply to the Amended Budget Variation Request as if it were a Budget Variation Request.

7.3 Withdrawals from Delivery Funding Accounts

Without prejudice to clause 7.4, the Asset Trustee and the Project Trustee must procure that amounts are only withdrawn from their respective Delivery Funding Accounts:

- (a) to make payments due to the Contractor under the D&C Commitment Deed in respect of:
 - (i) payment claims made under the D&C Commitment Deed to the extent set out in a payment statement issued by the D&C Independent Certifier under the D&C Commitment Deed (and including any GST amounts payable in respect of such payment claims); and
 - (ii) Break Costs payable to the Contractor;
- (b) to pay for Stage 3 Trustee Costs and Break Costs not payable to the Contractor;
- (c) if the Term ends prior to the date of Financial Close, to make payments after the end of the Term of amounts which have been funded by RMS under clause 6.5;
- (d) to make transfers between the Delivery Funding Accounts under internal funding arrangements between the Asset Trustee and the Project Trustee; and
- (e) to make transfers to RMS in accordance with clause 6.3 or 6.4.

7.4 Excluded Purposes

The Asset Trustee and the Project Trustee must not withdraw any amount from a Delivery Funding Account for the purposes of funding, or reimbursing any person in respect of the funding of, any Excluded Purpose.

8. Dispute Resolution

If a party considers that a dispute has arisen in relation to this deed, any party may refer the matter to dispute resolution in accordance with the Dispute Resolution Procedure under the Project Deed.

9. GST

9.1 Interpretation

- (a) Words or expressions used in this clause 9 which are defined in the GST Act have the same meaning in this clause 9.
- (b) In this clause 9:
 - (i) **GST** has the meaning given in the GST Act.
 - (ii) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (*Cth*).
 - (iii) **GST Amount** has the meaning given in clause 9.3(a).
 - (iv) **GST Exclusive Consideration** has the meaning given in clause 9.3(a).
 - (v) **GST Recipient** has the meaning given in clause 9.3(a).
 - (vi) **GST Supplier** has the meaning given in clause 9.3(a).

9.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as "GST inclusive", does not include an amount on account of GST.

9.3 Gross up of consideration

Despite any other provision in this deed, if a party (**GST Supplier**) makes a supply under or in connection with this deed on which GST is payable (not being a supply the consideration for which is specifically described in this deed as "GST inclusive"):

- (a) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST Exclusive Consideration**) is increased by, and RMS of the supply (**GST Recipient**) must also pay to the GST Supplier, an amount equal to the GST Exclusive Consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clause 9.4, the GST Amount must be paid to the GST Supplier by the GST Recipient without set off, deduction or requirement for demand, at the same time as the GST Exclusive Consideration is payable or to be provided.

9.4 Reimbursements (net down)

If a payment to a party under this deed is a reimbursement or indemnification or otherwise calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that party is a member of (as the case may be), is entitled in respect of that loss, cost or expense.

9.5 Adjustment events

If an adjustment event arises in respect of a supply made under or in connection with this deed in respect of which GST is or becomes payable, then:

- (a) the GST Supplier must issue an adjustment note to the GST Recipient within 15 days of the adjustment event occurring; and
- (b) within 15 days of the adjustment note being issued by the GST Supplier in accordance with clause 9.5(a):
 - (i) if the GST Supplier's corrected GST Amount is less than the previously attributed GST Amount, the GST Supplier must refund the difference to the GST Recipient; or
 - (ii) if the GST Supplier's corrected GST Amount is greater than the previously attributed GST Amount, the GST Recipient must pay the difference to the GST Supplier.

10. Termination

10.1 Financial Close

This deed terminates immediately upon the first to occur of:

- (a) Financial Close;
- (b) the date falling 6 months after the date of the D&C Commitment Deed; or

- (c) termination of the Commitment Deed,
- without the need for notice to be given by either party to the other.

10.2 Termination for breach

A party (**Terminating Party**) may terminate this deed immediately by giving written notice to the other parties if:

- (a) RMS (where the Terminating Party is a Trustee) or a Trustee (where the Terminating Party is RMS) commits a material breach of this deed and the breach is not capable of remedy;
- (b) RMS (where the Terminating Party is a Trustee) or a Trustee (where the Terminating Party is RMS) commits a material breach of this deed which is capable of remedy and RMS (where the Terminating Party is a Trustee) or a Trustee (where the Terminating Party is RMS) fails to cease the acts or omissions constituting a breach and remedy the breach within 10 Business Days after being required in writing to do so by the relevant Terminating Party; or
- (c) an Insolvency Event occurs in respect of RMS (where the Terminating Party is a Trustee) or any member of the Group (where the Terminating Party is RMS).

10.3 Termination for convenience

The Asset Trustee or the Project Trustee (in each case acting in accordance with the directions of their respective shareholders, reasonable evidence of which directions has been provided to RMS) may, in their respective absolute discretion, terminate this deed by giving not less than 30 days' written notice to the other parties.

10.4 Effect of termination

If this deed is terminated then:

- (a) the provisions of this deed will cease to have effect except for:
 - (i) any provision of this deed which is relevant to the ability of the Trustees to make claims against RMS under clause 6.5;
 - (ii) any provision of this deed which is relevant to:
 - A. the submission of Funding Payment Claims after the end of the Term pursuant to clause 6.2(b)(ii) (**Post Term Expenses**); or
 - B. the payment by RMS of Net Funding Claim Amounts in respect of any Post Term Expenses,(which provisions will, subject to clauses 10.4(a)(iii) and 10.4(a)(iv), cease to have effect when Post Term Expenses, and the payment of Net Funding Claim Amounts by RMS in respect of Post Term Expenses, are no longer possible under clause 6.2);
 - (iii) any provision of this deed which is relevant to the maintenance of the Delivery Funding Accounts or the withdrawal of any amount from the Delivery Funding Accounts after the end of the Term by a Trustee in accordance with the terms of this deed (which provisions will, subject to clause 10.4(a)(iv), cease to have effect when the last Delivery Funding Account is closed in accordance with the terms of this deed); and

- (iv) the provisions of clauses 7.1, 8, 10 and 11 (and the provisions of clause 1, to the extent necessary for the purposes of the operation of any such clause) (which will survive termination);
- (b) each party retains the rights it has against the others in respect of any breach of this deed occurring before termination;
- (c) termination will not affect any rights or obligations which may have accrued before termination;
- (d) RMS's liability will be limited to the payment of:
 - (i) any amount payable by it under clause 6.5(e);
 - (ii) any Net Funding Claim Amount under a Post Term Expense (as defined in clause 10.4(a)(i)A); and
 - (iii) any Funding Payment that was due and payable to the Asset Trustee under this deed prior to the date of the notice of termination and which remains unpaid as at the date of termination; and
- (e) the Trustees' obligations to RMS will be limited to compliance with clauses 6.3 and 6.4 and RMS will not be entitled to make any other Claim against the Trustees in connection with this deed.

11. General

11.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be given to a party:
 - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post, fax or email; and
 - (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 11.1):

Roads and Maritime Services

Name:	Roads and Maritime Services
Address:	20-44 Ennis Road Milsons Point NSW 2016
Fax:	02 8588 4171
Email:	[REDACTED]
For the attention of:	Executive Director, Motorways

Asset Trustee

Name:	WCX M4-M5 Link AT Pty Ltd
Address:	Level 33 259 George Street Sydney NSW 2000
Fax:	
Email:	[REDACTED]
For the attention of:	Project Director, M4-M5 Link

Project Trustee

Name: WCX M4-M5 Link PT Pty Ltd
Address: Level 33
259 George Street
Sydney NSW 2000

Fax:

Email:

For the attention of: Project Director, M4-M5 Link

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;
- (d) (in the case of email) must:
 - (iii) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed; and
 - (iv) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender;

- (e) is taken to be given by the sender and received by the recipient:
 - (i) (in the case of delivery by hand or courier service) on delivery;
 - (ii) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
 - (iii) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - (iv) (in the case of fax) at the time shown on the transmission confirmation report produced by the fax machine from which it was sent showing that the whole fax was sent to the recipient's fax number,
 - (v) (in the case of email whether or not containing attachments) the first to occur of:
 - A. receipt by the sender of an electronic acknowledgement from the recipient's information system showing confirmation of delivery to the recipient's email address; and
 - B. 4 hours after the time sent (as recorded on the sender's information system) unless the party sending the email receives an automated message that the email has not been delivered,

provided that:

- (f) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (v) the recipient is absent from the place at which the communication is delivered or sent;

- (vi) the communication is returned unclaimed; and
- (vii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (g) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (h) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

If a communication delivered or sent under this clause 11.1 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with this clause 11.1.

11.2 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

11.3 Interest

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

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

11.4 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) 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, if that venue falls within clause 11.4(a).

11.5 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

11.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the 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) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

11.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

11.8 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

11.9 Assignment

- (a) A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.
- (b) Without limiting clause 11.9(a), the Trustees must not use the Funding Payments, this deed (including any of RMS's obligations under this deed) as security for the purposes of obtaining or complying with any form of borrowing, credit, payment or other interest.

11.10 Counterparts

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

11.11 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

11.12 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

11.13 Forecasting

During the Term the Trustees must:

- (a) within 3 Business Days before the last day of each month, use their best endeavours to provide to RMS:

- (i) an accrual expenditure estimate for that month against the aggregate Approved Budget; and
 - (ii) a cash flow forecast report which describes the Funding Payments that are reasonably anticipated at the date of the report to be made for the following calendar month (Cash Flow Forecast); and
- (b) update the Cash Flow Forecast and provide a copy to RMS as soon as practicable if the amount of expenditure forecast for any month of the Term materially changes from the amount of expenditure forecast in the Cash Flow Forecast.

11.14 Audit and review

- (a) At any time during the Term, and for a period of 7 years after the expiry or termination of this deed, the Trustees will give RMS, any persons nominated by RMS and any Public Accountability Body access to:
- (i) the Trustees' premises and the premises where the Project Delivery Services are or were provided; and
 - (ii) copies of any records and other documents held or created by the Trustees in relation to this deed,
- for purposes associated with this deed, including to:
- (iii) monitor or review the Project Delivery Services, including to assess the effectiveness of the Project Delivery Services or to support improvements in the provision of the Project Delivery Services; and
 - (iv) review, audit or investigate the Trustees' performance under this deed.
- (b) Whenever practicable, RMS will provide the Trustees with reasonable prior notice of any access referred to in clause 11.14(a).
- (c) RMS will use best endeavours to minimise interference to the Trustees' employees and the conduct of the Project Delivery Services.
- (d) Nothing in this clause 11.14 limits or restricts in any way the authority or rights of any Public Accountability Body.
- (e) The Trustees must:
- (i) cooperate with and assist RMS and any of the other persons referred to in clause 11.14(a) to have the information and access contemplated by clause 11.14(a);
 - (ii) give full and free access to material and personnel necessary to conduct a review, audit or investigation of the Trustees' performance under this deed; and
 - (iii) allow RMS and any of the other persons referred to in clause 11.14(a) to inspect and copy any information necessary to conduct such review, audit or investigation.
- (f) Any action taken by the Trustees under this clause 11.14 will be at RMS's cost (reimbursement of which cost will be a debt due and owing by RMS and an independent obligation to any other provision in this deed).

11.15 Records

Without limiting clause 11.14, the Trustees must in relation to the provision of the Project Delivery Services:

- (a) maintain all records and other documents that relate to the provision of the Project Delivery Services (including by third party suppliers) and the rendering of Funding Payment Claims to and payment of Funding Payments by RMS; and
- (b) on reasonable request by RMS and at RMS's cost (reimbursement of which cost will be a debt due and owing by RMS and an independent obligation to any other provision in this deed), provide RMS with copies of those records and other documents,

throughout the Term and for a period of 7 years after the Term, or any longer period if required under any Law.

11.16 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

Schedule 1 – Funding Payment Claim

To: Roads and Maritime Services (**RMS**)

From: WCX M4-M5 Link AT Pty Ltd (ACN 624 153 742) (the **Asset Trustee**)

1. We refer to the document titled 'Delivery Funding Deed WestConnex Stage 3A' between RMS, the Asset Trustee and WCX M4-M5 Link PT Pty Ltd (the **Project Trustee**) dated *[insert date]* (the **Development Funding Deed**).
2. This is a Funding Payment Claim, delivered in accordance with clause 6.2 of the Development Funding Deed.
3. Unless expressly defined in this Funding Payment Claim, terms used in this Funding Payment Claim have the meanings given to them in, or for the purposes of, the Development Funding Deed.
4. The Net Funding Claim Amount under this Funding Payment Claim is \$[##] of which:
 - (a) \$[##] is payable to the Asset Trustee; and
 - (b) \$[##] is payable to the Project Trustee.

We attach tax invoices from each of the Asset Trustee and the Project Trustee for amounts which correspond to these aggregate amounts.

5. The Net Funding Claim Amount referred to in paragraph 4 above is calculated as follows:

	Description	Amount (inc GST)	Details
a.	Aggregate of: (a) the amount of relevant Commitment Deed Payment Claim; and (b) GST which the Asset Trustee projects will be payable in respect of that Commitment Deed Payment Claim.	\$[##]	We attach: (a) a copy of the corresponding payment claim from the Contractor under the D&C Commitment Deed; and (b) a pro forma tax invoice for the gross aggregate amount claimed under this paragraph a.
b.	Stage 3 Trustee Costs	\$[##]	As described in the breakdown set out in paragraph 6 of this claim
c.	Break Costs (if any)	\$[##]	As described in the breakdown set out in paragraph 6 of this claim

d.	Any Excess RMS Payment in respect of the immediately preceding calendar month	\$[##]	We attach a copy of the credit note corresponding to the relevant Excess RMS Payment
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6. The Stage 3 Trustee Costs claimed under this Funding Payment Claim comprise the following¹:

Description	Amount (exc GST)	GST	Amount (inc GST)

7. [We hereby certify that Break Costs referred to in paragraph 5 above were reasonably and properly incurred by the relevant Trustee.]²

For and on behalf of
WCX M4-M5 Link AT Pty Ltd

Signed:
Asset Trustee's Representative

Dated:

Attachments (as relevant):

- Pro forma tax invoice in respect of relevant payment claim from Contractor and projected GST thereon
- Credit note in respect of any Excess RMS Payment taken into account in calculating the Net Funding Claim Amount under this Funding Payment Claim
- Tax invoices from each of Project Trustee and Asset Trustee for the amounts referred to in paragraph 4

¹ To include breakdown details as required under clause 6.2(b)(ii)B.

² Delete for all Funding Payment Claims that do not relate to a claim for Break Costs.

Executed as a deed.

The Seal of Roads and Maritime Services was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the Transport Administration Act 1988 (NSW):

Name of signatory

Executed by WCX M4-M5 Link AT Pty Ltd ACN 624 153 742 in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Asset Trust (ABN 18 934 919 866) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by WCX M4-M5 Link PT Pty Ltd ACN 624 153 788 in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Project Trust (ABN 67 667 191 375) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Annexure A - Approved Budget

Payment	Amount
Payments to the Contractor (including Break Costs payable to the Contractor)	\$ [REDACTED] (excluding GST)
Stage 3 Trustee Costs (including Break Costs other than those payable to the Contractor)	\$ [REDACTED] (excluding GST)