



Interlink Roads Pty Ltd
Toll Plaza
M5 South West Motorway
Hammondville NSW 2170

Attention: The Directors

Dear Sirs

M5 WEST WIDENING PROJECT – PRE COMMITMENT AGREEMENT

Introduction

1. The NSW Government is considering the widening of the M5 South West Motorway (**Project**) as part of the M5 Corridor Expansion subject to the Project representing value for money and obtaining the necessary Planning Approval.
2. Interlink Roads has previously provided the RTA with a document titled "M5 Widening Proposal" dated 22 September 2008. Pursuant to the terms of the Initial Agreement Interlink Roads agreed, among other things, to develop an updated proposal for the Project and provided the RTA with that updated proposal dated 23 April 2010 (**Updated Proposal**).
3. The NSW Government has approved the RTA to directly deal with Interlink Roads in respect of the matters set out in this agreement and with the objective of achieving greater value for money than as stated in the Updated Proposal. Following submission of the Updated Proposal, Interlink Roads has provided a further Update to Proposal dated 2 July 2010 (**Update to Proposal**) which Interlink Roads considers represents a robust value for money proposal in respect of the Project. Both parties recognise that further work is required to develop the Updated Proposal and the Update to Proposal and refine the business case to enable the NSW Government to consider whether they represent a value for money proposition.
4. Each of the RTA and Interlink Roads has agreed to continue to work with each other under the terms of this agreement so as to:
 - (a) establish a framework to assist the RTA and Interlink Roads in considering and further developing the Project by:
 - (i) allocating primary responsibility for preparing the Key Deliverables; and
 - (ii) adopting the process for seeking to negotiate and agree the Key Deliverables,so as to enable the parties to consider whether, subject to any necessary NSW Government or Interlink Roads approvals, to enter into a Commitment Deed; and
 - (b) facilitate the carrying out of an Environmental Assessment of the Project by the RTA as contemplated by clauses 11 and 12,

in each case with an aim of seeking to achieve Financial Close for the Project by the end of February 2011. The RTA and Interlink Roads shall use reasonable endeavours to aim to achieve this target date for Financial Close, recognising that some environmental assessment activities are outside the control of the parties.

Roads and Traffic Authority

5. The parties agree to work with each other in good faith in seeking to achieve the matters set out in clause 4 and, in so doing, to take into account comments from each other including in relation to traffic, funding arrangements, commercial risk allocation and achieving overall value for money.
6. The RTA and Interlink Roads acknowledge and agree that, on and from the Effective Date, this agreement will be legally binding.

Definitions

7. For the purposes of this agreement the following definitions apply:

Authority means:

- (a) any governmental or semi governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to any part of this agreement; or
- (c) any other person having jurisdiction over, or ownership of, any other part of the Project.

Commitment Deed means, following the negotiation of all of the Key Deliverables, an agreement between the RTA and Interlink Roads which records, subject to the exceptions set out therein, the terms and basis upon which the parties would be prepared to proceed to Financial Close in respect of the Project.

Cost Plan has the meaning given to that term in clause 15(a).

Draft Scope of Works and Technical Criteria means the documents referred to in Schedule 4, as will be further developed and agreed between the RTA and Interlink Roads after the Effective Date.

Effective Date means the date of execution of this agreement by Interlink Roads.

Environmental Assessment means the environmental assessment for the Project required under Part 3A of the EP&A Act including the environmental assessment report and preferred project report.

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

Financial Close means the point in time at which:

- (a) the RTA, Interlink Roads and all other parties to all relevant transaction documents required to give effect to the Project (including all financing and equity documentation and amendments to existing transaction documentation) have reached agreement on the full terms and conditions of those documents; and
- (b) all conditions precedent to the commencement of those documents (including any approvals required by either the RTA or Interlink Roads) have been satisfied or waived,

such that each party is unconditionally bound to perform their respective obligations in accordance with the terms of those documents.

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

Initial Agreement means the agreement titled "M5 West Widening Project – Initial Agreement" between the RTA and Interlink Roads dated 18 December 2009 in relation to the Project.

Key Deliverables has the meaning given to that term in Schedule 1.

Key Deliverables Costs has the meaning given to that term in clause 29.

Other Project Proposal Costs means the costs reasonably and actually incurred by Interlink Roads:

- (a) in preparing and submitting all proposals to the RTA prior to 22 November 2008;
- (b) since 22 November 2008 up to 8 November 2009 in relation to the further development of the Proposal; and
- (c) which have been substantiated to such a level of detail and verification as is reasonably required by the RTA,

subject to an upper reimbursement limit of

Planning Approval means the approval for the Project required under Part 3A of the EP&A Act.

Preliminary Activities Costs means:

- (a) the costs referred to in clause 29 of the Initial Agreement to 23 June 2010 subject to the conditions in clause 25 of the Initial Agreement, as may be adjusted in accordance with clauses 26 and 27 of the Initial Agreement; and
- (b) to the extent not already covered by paragraph (a), the costs reasonably and actually incurred by Interlink Roads after the submission of the Updated Proposal to 23 June 2010 which have been substantiated to such a level of detail and verification as is reasonably required by the RTA in respect of:
 - (i) the preparation of the Update to Proposal;
 - (ii) early contractor involvement activities following the procurement process contemplated in clause 7(b) of Schedule 2 to the Initial Agreement; and
 - (iii) ongoing support to RTA in relation to the Environmental Assessment,

subject to an upper aggregate reimbursement limit of

Project has the meaning given to that term in clause 1.

Project Control Group means the project control group established under Schedule 3.

this agreement means clauses 1 to 66 (inclusive) of this document together with the following Schedules and any attachments to those Schedules:

- (a) Schedule 1 – Key Deliverables;
- (b) Schedule 2 – High level procurement process map and target program for Key Deliverables;
- (c) Schedule 3 – Governance Protocol;
- (d) Schedule 4 – Draft Scope of Works and Technical Criteria;
- (e) Schedule 5 – Documents, materials and other information provided to the RTA;
- (f) Schedule 6 – Initial Cost Plan; and

(g) Schedule 7 – Draft D&C Terms.

Updated Proposal has the meaning given to that term in clause 2.

Update to Proposal has the meaning given to that term in clause 3.

Key Deliverables

8. The RTA and Interlink Roads must work together in a cooperative manner and use their reasonable endeavours so as to prepare, and seek to negotiate and agree, the Key Deliverables in accordance with this agreement.

Commitment Deed

9. If the RTA and Interlink Roads agree during or at the conclusion of the negotiation of all of the Key Deliverables, subject to any necessary NSW Government approvals, the RTA must prepare, and the RTA and Interlink Roads must seek to negotiate and agree, a Commitment Deed.
10. The RTA and Interlink Roads acknowledge and agree that the Commitment Deed would need to recognise, among other things, that some adjustment to one or more of the Key Deliverables may be required to accommodate the final terms of the Planning Approval.

Environmental Assessment and Planning Approval

11. The RTA and Interlink Roads agree that the RTA will:
- (a) be the proponent for the Project under Part 3A of the EP&A Act;
 - (b) seek approval of the Project under Part 3A of the EP&A Act;
 - (c) lead the Environmental Assessment of the Project and will manage the preparation of all Environmental Assessment documentation;
 - (d) provide an opportunity for Interlink Roads to comment on reports produced in final draft form and other related documents prior to submission to the Department of Planning in respect of the Environmental Assessment; and
 - (e) provide Interlink Roads with any draft planning conditions received by the RTA in respect of any application for Planning Approval as soon as practicable following receipt of those conditions by the RTA from the Department of Planning or by any other Authority, and the RTA will consider any comments provided by Interlink Roads in respect of any such draft planning conditions and will reasonably consider those comments in preparing any response to the Department of Planning or other Authority.
12. The RTA must use reasonable endeavours, in relation to the Planning Approval process, to proceed with all activities reasonably required to be completed by the RTA to enable the determination of an application for Planning Approval as soon as reasonably practicable and to then aim to seek to achieve the date for Financial Close referred to in clause 4.
13. Interlink Roads must use reasonable endeavours to provide the RTA:
- (a) with all design, construction methodology and technical information;
 - (b) with information, and responses to all queries, in relation to any submissions or comments to be made or received during the Planning Approval process;
 - (c) and its consultants with physical access to the Interlink Roads' lease areas (subject to reasonable safety and security requirements); and
 - (d) with other support and inputs,

that the RTA reasonably requires in regard to any one or more of the following:

- (e) developing and preparing the Environmental Assessment;
 - (f) progressing the Planning Approval process;
 - (g) preparing and progressing any other related documentation or reports,
- having regard to the amount allocated to those activities in the Cost Plan.

Expenditure in connection with the Key Deliverables

14. Interlink Roads must ensure the expenditure incurred by it in connection with the Key Deliverables, and complying with its obligations under clause 13, is efficient and economic and on commercial terms.

Cost Plan

15. In preparing and negotiating the Key Deliverables and complying with its obligations under clause 13 and without limiting the operation of clauses 14 or 29, Interlink Roads must:
- (a) incur costs in accordance with the initial cost plan set out in Schedule 6 and any updated cost plan which has been unanimously approved by the Project Control Group as contemplated by paragraph (c) below (**Cost Plan**);
 - (b) update the Cost Plan every fortnight (and at such other times as may be reasonably requested by the RTA) throughout the term of this agreement so that the Cost Plan remains current and accurate and details:
 - (i) the actual costs incurred by Interlink Roads:
 - (A) in preparing and negotiating the Key Deliverables; and
 - (B) in complying with its obligations under clause 13;
 - (ii) Interlink Roads' cash flow estimates and projected costs for the preparation and negotiation of the outstanding Key Deliverables,

but on the understanding that the categories of costs and the upper limits in the Cost Plan cannot change without the unanimous approval of the Project Control Group; and
 - (c) promptly submit each updated Cost Plan to the Project Control Group for comment and unanimous approval.
16. The Cost Plan must address and include, as a minimum, an estimate of the costs to be incurred in preparing and negotiating the Key Deliverables and complying with obligations under clause 13, such cost estimate to be broken down by key activities approved by the Project Control Group.
17. The parties acknowledge and agree that the initial Cost Plan set out in Schedule 6 meets the requirements set out in clause 16.

Engagement of contractors, suppliers and service providers

18. Interlink Roads may only engage contractors, suppliers or service providers to undertake activities in connection with the Key Deliverables specified as items 1, 4 and 5 in clause 1 of Schedule 1 if those contractors, suppliers or service providers:
- (a) are competent and experienced;
 - (b) nominate key individuals with sufficient experience to carry out the relevant activity and undertake that those individuals will carry out the relevant activity;

- (c) are pre-qualified with the RTA (where an RTA pre-qualification list exists for a work, supply or service required for the activity); and
 - (d) have not previously been engaged by the RTA in relation to the Project.
19. The parties acknowledge that all existing contractors, suppliers or service providers engaged by Interlink Roads to undertake activities in connection with the Key Deliverables (to the extent their identity was made known to the RTA by Interlink Roads in writing prior to the Effective Date) meet the requirements of clause 18.
20. Interlink Roads must, promptly upon request by the RTA, provide information to the RTA which demonstrates how the requirements in clause 18 are fulfilled.

Costs incurred by the parties

21. Subject to clauses 25 and 28, Interlink Roads must pay all its own costs of fulfilling its obligations under this agreement. For the avoidance of doubt nothing in this agreement requires Interlink Roads to continue incurring costs in the performance of its obligations under this agreement where the Key Deliverables Costs have reached the upper reimbursement limit referred to in clause 29.
22. Subject to clause 23, the RTA must pay its own costs of fulfilling its obligations under this agreement.
23. If the Project reaches Financial Close, Interlink Roads must reimburse the RTA, within 14 days of receiving a request for reimbursement after the achievement of Financial Close, for all external costs incurred by the RTA in connection with the Environmental Assessment and Planning Approval process up to Financial Close, subject to a maximum amount of \$3 million. The RTA must provide Interlink Roads with updated forecasts of costs and records of incurred costs as reasonably requested by Interlink Roads. Interlink Roads may finance the amount payable to the RTA as contemplated in clause 28.
24. If, at any stage, the NSW Government or the RTA decides not to proceed with the Project, the RTA must provide written notice to Interlink Roads of that fact as soon as reasonably practicable.
25. If:
- (a) this agreement terminates under clause 47;
 - (b) the RTA terminates this agreement under clause 48(a) or clause 48(b); or
 - (c) Interlink Roads terminates this agreement under clause 49,
- Interlink Roads may then claim, and the RTA will promptly reimburse Interlink Roads for 100% of:
- (d) the Preliminary Activities Costs; and
 - (e) the Key Deliverables Costs, provided that, in the case of the Key Deliverables Costs, Interlink Roads has:
 - (i) reasonably progressed the completion of the Key Deliverables in accordance with the scope contemplated in Schedule 1;
 - (ii) incurred costs in preparing and negotiating the Key Deliverables, and complying with its obligations under clause 13, in accordance with the Cost Plan; and
 - (iii) provided to the RTA the materials required by clause 35.

26. Where a Key Deliverable has been agreed by the RTA and Interlink Roads, the parties may also agree the Key Deliverables Costs that apply to that Key Deliverable, in which case that amount will be paid to Interlink Roads as part of the Key Deliverables Costs under clause 25(e) provided that the requirements in clause 25(e) are satisfied.
27. For the purposes of clause 25(e)(i) only, where the RTA considers (acting reasonably) that Interlink Roads has failed to reasonably progress the completion of the Key Deliverables in accordance with the scope contemplated in Schedule 1, the RTA will pay to Interlink Roads under clause 25 (if the other requirements in clause 25 have been satisfied) that proportion of the Key Deliverables Costs as the RTA determines (acting reasonably) represents a reasonable amount for the preparation of the Key Deliverable (up to or committed prior to the date of termination). Any disagreement in relation to an amount determined by the RTA under this clause 27 will be referred to the Project Control Group for consideration.
28. If the RTA proceeds with the whole or part of the Project, it is envisaged that:
- (a) other than where clause 25 applies, the Key Deliverables Costs;
 - (b) other than where clause 25 applies, the Preliminary Activities Costs;
 - (c) the Other Project Proposal Costs; and
 - (d) the external costs incurred by the RTA to the extent referred to in clause 23,
- will be financed by being incorporated into the overall Project cost set out in the financial model included in the final Project documentation signed between the RTA and Interlink Roads and, therefore, the Key Deliverables Costs, the Preliminary Activities Costs and the Other Project Proposal Costs:
- (e) will not themselves be reimbursed by the RTA under this agreement; and
 - (f) may not be claimed on any basis whatsoever by Interlink Roads against the RTA or the NSW Government, except as contemplated in this clause 28.
29. For the purposes of this agreement, **Key Deliverables Costs** means the costs reasonably and actually incurred by Interlink Roads:
- (a) in preparing and negotiating the Key Deliverables; and
 - (b) complying with its obligations in clause 13,
- in accordance with this agreement:
- (c) from 12 July 2010 up to the earliest of:
 - (i) the date referred to in clause 47;
 - (ii) the date of any notice given by the RTA under clause 48(a); and
 - (iii) the date of any notice given by the RTA under clause 48(b); and
 - (d) which have been incurred in accordance with the Cost Plan and the requirements of clause 14 and 18 and have been substantiated to such a level of detail and verification as is reasonably required by the RTA,
- subject to an upper reimbursement limit of _____ or such other amount as may be agreed in writing between the RTA and Interlink Roads. This includes costs incurred or committed up to the date of the notification or termination referred to in clause 25, provided such amount is invoiced no later than two months from that date.

Initial Agreement

30. The RTA and Interlink Roads acknowledge and agree that the Initial Agreement terminated by expiry on 23 June 2010 in accordance with clause 47 of the Initial Agreement.
31. Notwithstanding any term of the Initial Agreement to the contrary, the RTA and Interlink Roads agree the following matters:
- (a) the payment obligations of the RTA under clauses 25 and 28 of the Initial Agreement (regarding the Preliminary Activities Costs and the Other Project Proposal Costs) are now covered by clauses 25 and 28 of this agreement, and Interlink Roads may not claim the Preliminary Activities Costs or the Other Project Proposal Costs from the RTA on any basis whatsoever under the Initial Agreement;
 - (b) the payment obligations of Interlink Roads under clause 23 of the Initial Agreement (regarding the RTA's external costs incurred in connection with the Environmental Assessment and Planning Approval process) are now covered by clause 23 of this agreement, and the RTA may not claim those costs from Interlink Roads on any basis whatsoever under the Initial Agreement; and
 - (c) except as set out in paragraphs (a) and (b) above, clause 64 of the Initial Agreement continues to apply.

Governance Protocol

32. The parties must use best endeavours to comply with the governance protocol set out in Schedule 3 at all times during the term of this agreement.

Intellectual property rights

33. Interlink Roads:
- (a) grants to the RTA (and warrants that it has the right to grant) a perpetual, irrevocable, royalty free, non-exclusive licence (including the right to sub-license) to make whatever use of all intellectual property rights the RTA considers necessary or desirable in relation to the Project, in all of the following:
 - (i) the documents, materials and other information described in Schedule 5, which the RTA acknowledges were provided to it by Interlink Roads on or before the Effective Date; and
 - (ii) the other documents, materials and other information provided to the RTA under or in connection with this agreement as contemplated in clause 13(a), and Schedule 1 excluding:
 - (A) items 4 and 8 of Schedule 1;
 - (B) those parts of items 3 and 7 of Schedule 1 which have been provided by the RTA); and
 - (C) those documents agreed under item 9 of Schedule 1, unless it is unanimously agreed by the Project Control Group that those documents are to be included for the purpose of this paragraph (a)(ii); and
 - (b) must use best endeavours to procure for the RTA a perpetual, irrevocable, royalty free, non-exclusive license (including the right to sub-license) to make whatever use of all intellectual property rights the RTA considers necessary or desirable in relation to the Project, in all other materials provided to the RTA under this agreement, including the materials provided to the RTA under clauses 13(b) and 13(d).

34. Interlink Roads warrants that all documents, materials and other information provided to the RTA under or in connection with this agreement and the use of those documents, materials and other information in accordance with the licence granted under clause 33, will not infringe any intellectual property right or any moral right.

Delivery up of documents, materials and other information produced

35. On the date of payment of any amount by the RTA to Interlink Roads under clause 25 or otherwise at the expiry or termination of this agreement (whichever is the earliest), Interlink Roads must (if it has not already done so in accordance with this agreement or the Initial Agreement) deliver to the RTA a complete set of all documents, materials and other information produced by, or on behalf of, Interlink Roads as contemplated in clause 33 including, subject to the materials then existing and excluding superseded draft versions:
- (a) design documentation relating in any way to the Project, whether complete or not; and
 - (b) other materials reasonably required by the RTA to complete the design, Environmental Assessment and procurement processes.
36. The RTA may also request from Interlink Roads the delivery of design documentation that Interlink Roads produced in relation to the Project before the date of signing of the Initial Agreement by Interlink Roads. The delivery of such material by Interlink Roads would be subject to a separate reimbursement by the RTA to Interlink Roads for all reasonable costs incurred in the development of the material to be agreed between the RTA and Interlink Roads consequent upon the RTA making the request.

Insurance

37. Interlink Roads must effect and maintain the following insurances:
- (a) workers compensation insurance for any injury, damage, expense, loss or liability suffered or incurred by any person (or their dependants) engaged in performing activities in connection with Interlink Roads' obligations under this agreement:
 - (i) giving rise to a claim:
 - (A) under any statute relating to workers or accident compensation; or
 - (B) for employer's liability at common law for not less than the amount customarily insured by prudent insureds in the relevant jurisdiction for any one event (but only in jurisdictions where common law claims are permissible outside the relevant statutory scheme);
 - (ii) in every State or Territory where any activities in connection with Interlink Roads' obligations under this agreement will be carried out as well as each State or Territory where Interlink Roads' employees normally reside or where their contract of employment was made; and
 - (iii) where possible under the relevant State or Territory law or scheme governing workers compensation insurance, extend the cover so as to indemnify the RTA for the RTA's liability to persons engaged by Interlink Roads; and
 - (b) public liability insurance which must:
 - (i) be written on an occurrence basis;
 - (ii) name Interlink Roads, its employees, contractors, suppliers or service providers from time to time involved in the performance of activities in connection with Interlink Roads' obligations under this agreement as insureds;

- (iii) cover the insureds for their liability to third parties for loss of, loss of use of, or damage to property and injury to, illness of or death of any person (other than liability which the law requires to be covered under a workers compensation insurance policy) occurring during the course of or in connection with the performance of activities in connection with Interlink Roads' obligations under this agreement;
 - (iv) cover the RTA and Interlink Roads' respective liability to each other for loss of use of or loss or damage to property and the death of or injury or illness to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
 - (v) have a limit of indemnity for each and every occurrence of not less than \$20 million.
38. Interlink Roads must ensure that any contractors, suppliers or service providers that are engaged to perform activities in connection with Interlink Roads' obligations under this agreement maintain adequate insurance.
39. Interlink Roads must, promptly upon request by the RTA, provide reasonable evidence to the RTA of Interlink Roads' compliance with clauses 37 and 38.

Acknowledgement and release

40. Without limiting or derogating from their respective obligations under this agreement, the RTA and Interlink Roads acknowledge and agree that each party is under no obligation to (and have made no representation that they will):
- (a) agree to or proceed with the Project, the Proposal, the Updated Proposal, the Update to Proposal, the Draft Scope of Works and Technical Criteria or the Key Deliverables in any form; or
 - (b) enter into any contractual arrangement in respect of the Project, the Proposal, the Updated Proposal, the Update to Proposal, the Draft Scope of Works and Technical Criteria, the Key Deliverables or any other arrangement or scope of works similar to the Project, the Proposal, the Updated Proposal, the Update to Proposal, the Draft Scope of Works and Technical Criteria or the Key Deliverables.
41. Other than:
- (a) a claim for payment under clause 25 (if applicable); and
 - (b) in the event that the RTA decides to proceed, in whole or in part, with the Project, the incorporation of those costs as contemplated under clause 28,

Interlink Roads releases the RTA and the NSW Government from all claims whatsoever in respect of any losses, costs or damages incurred or suffered (whether present or future, fixed or unascertained, actual or contingent) arising out of or in connection with any of this agreement, the Project, the Proposal, the Updated Proposal, the Update to Proposal, the Draft Scope of Works and Technical Criteria, the Key Deliverables or any meetings, correspondence, discussions, negotiations or documentation relating to any of those matters.

42. Other than a claim for payment under clause 23, the RTA releases Interlink Roads from all claims whatsoever in respect of any losses, costs or damages incurred or suffered (whether present or future, fixed or unascertained, actual or contingent) arising out of or in connection with any of the Proposal, the Updated Proposal, the Update to Proposal or any meetings, correspondence, discussions, negotiations or documentation relating to any of those matters.

43. The RTA and Interlink Roads acknowledge and agree that the releases in clauses 41 and 42 do not prejudice or limit the rights or obligations of either party under any subsequent agreement entered into by them in respect of the Project.
44. Interlink Roads acknowledges and agrees that:
- (a) the RTA owes no duty of care to Interlink Roads to review any documents or other information produced or provided by Interlink Roads arising out of or in connection with this agreement for errors, omissions or compliance with the requirements of this agreement or otherwise; and
 - (b) the RTA's review, approval, consultation or comments regarding such documents or information does not lessen or otherwise affect Interlink Roads' obligations under this agreement.

No impact on judgment and discretion

45. Nothing in this agreement requires the RTA or the NSW Government to do any thing which would (or which seeks or purports to) interfere with, direct, compromise, restrict or otherwise fetter the independent exercise of any judgement or discretion of the NSW Director-General of Planning or any NSW Government agency.
46. Interlink Roads acknowledges and agrees that nothing in this agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the RTA or the NSW Government to exercise any of its functions and powers pursuant to any legislation or otherwise.

Termination

47. Subject to clause 48 and clause 49, this agreement will terminate on 3 December 2010.
48. The RTA and Interlink Roads agree that this agreement will terminate immediately if any of the following occur before the date referred to in clause 47:
- (a) the NSW Government or the RTA provides written notice to Interlink Roads that it has decided not to proceed with the Project;
 - (b) the RTA provides written notice to Interlink Roads that this agreement is to terminate for any reason;
 - (c) the RTA and Interlink Roads enter into an agreement which supersedes this agreement; or
 - (d) Interlink Roads provides written notice to the RTA that it has decided not to proceed with the Project.
49. If:
- (a) the Project Control Group has formed the unanimous view; or
 - (b) the Project Control Group cannot arrive at a unanimous view, but either the Business Directors (as contemplated in item 3 of Schedule 3) or Interlink Roads' Chairman and the RTA's Chief Executive form the unanimous view; or
 - (c) following the process contemplated in item 3(g) and 3(h) of Schedule 3, there is no unanimous view,

that, by having regard to the current state of activities under this agreement as at 18 October 2010, the RTA has not provided Interlink Roads with its detailed positions in the Commercial Terms Schedule as contemplated in the first paragraph in item 7 of Schedule 1, Interlink Roads may, at its discretion, by notice in writing to the RTA:

- (d) suspend performance of its obligations under this agreement for any period up to the date of termination of this agreement (other than its obligations under clauses 13, 15 and 18 (to the extent relating to clause 13 obligations), 33, 34, 35, 36, 41, 56, 57 and 61); or
 - (e) terminate this agreement.
50. In the event of termination of this agreement, Interlink Roads will continue to assist the RTA in completing the Environmental Assessment and obtaining the Planning Approval, subject to a cost reimbursement arrangement to be agreed between the parties.
51. This agreement may only terminate in the circumstances contemplated in clauses 47, 48 and 49, unless the RTA and Interlink Roads otherwise agree in writing.

GST

52. Unless indicated otherwise, all amounts referred to in this agreement are stated exclusive of GST. If GST is or will be imposed on a supply made under or in connection with this agreement, to the extent that the consideration otherwise provided for that supply under this agreement is not stated to include an amount in respect of GST on the supply:
- (a) the consideration otherwise provided for that supply is increased by the amount of that GST; and
 - (b) the recipient must make payment of the increase at the same time as the consideration is provided subject to receipt of a tax invoice.
53. Where any indemnity, reimbursement or similar payment under this agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit, or any notional input tax credit, to which the party (or its representative member) is entitled in relation to the relevant cost, expense or other liability. Each of the RTA and Interlink Roads will be assumed to be entitled to full input tax credits unless they provide evidence to the other party to the contrary.
54. The supplier of a taxable supply under this agreement will issue a tax invoice or adjustment note to the recipient in relation to the supply.
55. For the purposes of clauses 52, 53 and 54 words defined in the GST Law have the same meaning in clauses 52, 53 and 54 unless the context makes it clear that a different meaning is intended.

Confidentiality

56. Subject to clause 58, the RTA and Interlink Roads must keep the terms of this agreement confidential.
57. Subject to clause 58 and without limiting clause 56, Interlink Roads must not disclose the commercial aspects or negotiations in connection with any of the Key Deliverables, nor must it disclose any of the Key Deliverables.
58. The RTA and Interlink Roads may disclose the terms of this agreement or, in respect of Interlink Roads, commercial aspects or negotiations in connection with any of the Key Deliverables or the Key Deliverables:
- (a) to its employees, professional advisers, bankers, auditors, financial advisers, financiers, insurance brokers or other consultants, contractors, subcontractors and suppliers on those persons undertaking to keep the terms of this agreement confidential;
 - (b) to comply with any applicable law or requirement of any regulatory body or government agency including any relevant stock exchange, but on the basis that prior written notice is given to the other party of such proposed disclosure;

- (c) in the case of the RTA:
 - (i) to the Minister (or Office of the Minister) with responsibility for the RTA;
 - (ii) to any other Minister or government agency for a purpose related to the Project; or
 - (iii) in accordance with government policy or for any legitimate government purpose or process;
- (d) in the case of Interlink Roads, to Interlink Roads' shareholders, directors and investors; and
- (e) for any other purpose with the prior written consent of the other party.

General

- 59. Any date or period of time set out in this agreement may be extended (or otherwise amended) by written agreement between the RTA and Interlink Roads at any time.
- 60. This agreement is governed by the laws in force in the State of New South Wales.
- 61. The RTA and Interlink Roads submit to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement.
- 62. The RTA and Interlink Roads agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under or in relation to this agreement howsoever such rights, obligations or liabilities are sought to be enforced.
- 63. Nothing in this agreement creates, or implies an intention to create, a relationship of employment, partnership or joint venture between the RTA and Interlink Roads and neither the RTA nor Interlink Roads may act or has the authority to act as agent of or in any way bind or commit the other to any obligation.
- 64. In this agreement the word "**includes**" and "**including**", and any variants of those words, will be read as if followed by the words "**without limitation**".
- 65. This agreement constitutes the entire, final and concluded agreement between the RTA and Interlink Roads about its subject matter. Subject to clause 31, any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- 66. The obligations in clauses 21, 22, 23, 25, 27, 28, 31, 33, 34, 35, 36, 39, 40, 41, 42, 43, 50, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62 and this clause 66 survive any termination or expiry of this agreement.

Yours faithfully



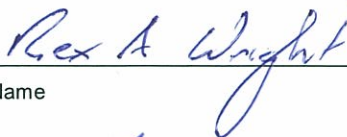
Michael Bushby
Chief Executive

18/08/10

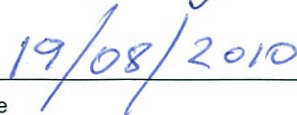
Executed by Interlink Roads Pty
Ltd (ABN 53 003 845 430) in
accordance with s127(1) of the
Corporations Act 2001 (Cth)



Signature of ~~director~~ *General Manager*



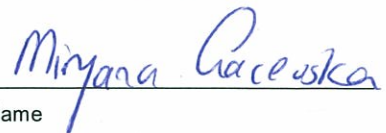
Name



Date



Signature of director/secretary



Name

Schedule 1

KEY DELIVERABLES AND REQUIREMENTS FOR KEY DELIVERABLES

1. Key Deliverables

1.1 Each of the Key Deliverables, and the party primarily responsible for the preparation of the Key Deliverable, is set out below.

Item No.	Key Deliverable	Party primarily responsible for the preparation of the Key Deliverable	Scope of Key Deliverable
1.	Concept Design Finalisation	Interlink Roads	<p>Review Volume 12 to the Update to Proposal "Options & SWTC Related Items" with the RTA to agree what changes (if any) are required to develop the document referred to in item 2 to this table.</p> <p>Design information required to complete the Environmental Assessment and Planning Approval</p>
2.	Scope of Works and Technical Criteria (D&C)	RTA	<p>The RTA and Interlink Roads acknowledge that:</p> <ul style="list-style-type: none"> (a) the Draft Scope of Works and Technical Criteria will comprise the categories of documents referred to in Schedule 4; and (b) the RTA and Interlink Roads will promptly meet and together discuss and develop the Draft Scope of Works and Technical Criteria in accordance with this agreement. <p>As at the Effective Date, the key issues currently identified by Interlink Roads in respect of the Draft Scope of Works and Technical Criteria that are still to be resolved between the RTA and Interlink Roads include (among others) those contemplated in item 1 of this table.</p>
3.	D&C Terms	RTA	<p>The RTA and Interlink Roads acknowledge that:</p> <ul style="list-style-type: none"> (a) the draft D&C Terms contained in Schedule 7 is the current draft of that document as at the Effective Date and is subject to further review, discussion and development in accordance with this agreement; and (b) Interlink Roads will, in parallel, seek to agree the D&C Terms with its proposed design and construction contractor for the Project.

4.	Updated Traffic Modelling	Interlink Roads	<p>Additional Traffic Forecast Scenarios</p> <p>(a) For the traffic scenario (provided as part of the traffic information under the Updated Proposal) which assumes the widening, no removal of cashback, a three times truck toll multiplier and a 10c car toll increase and no M5 East duplication, Interlink Roads must prepare traffic data which separately identifies the traffic impacts assumed for:</p> <ul style="list-style-type: none"> (i) the proposed three time truck toll multiplier; (ii) the proposed 10c car toll increase; (iii) construction activities; and (iv) ramp up. <p>(b) In respect of the "network enhancement impacts" (provided as part of the traffic information under the Updated Proposal), Interlink Roads must prepare traffic outputs which assess the impact of an M5 East duplication on both the "do nothing case" and the traffic case which assumes an M5 West widening.</p> <p>(c) For the current traffic scenario (provided as part of the traffic information under the Updated Proposal) which assumes the widening, no removal of cashback, a three times truck toll multiplier and a 10c car toll increase and no M5 East duplication, Interlink Roads must prepare traffic outputs which assess the impact of a 50c car toll increase rather than a 10c car toll increase.</p> <p>(d) The RTA may require further traffic scenarios to be modelled in addition to those listed in this item 4 which will require agreement in the Project Control Group.</p> <p>Any such further traffic modelling in respect of 4(b) (c) and (d) is provided at the RTA's request and is for information purposes only.</p>
5.	Financial Model	Interlink Roads	<p>Financial Model</p> <p>The Financial Model provided by Interlink Roads as part of the Updated Proposal will be updated for calculations, to be agreed, which provide clarity to the current status of the "Expected Financial Return" calculation in accordance with the F-5 Tollroad Project Deed dated 22 February 1991 (as amended from time to time).</p>

6.	D&C Capital Cost Amount	Interlink Roads	<p>D&C Capital Cost Amount</p> <p>The D&C Capital Cost Amount to:</p> <ul style="list-style-type: none"> (a) price the agreed Scope of Works and Technical Criteria; (b) provide a detailed price breakdown of each component of the D&C Capital Cost Amount in the form of a payment schedule and in the form of monthly cashflow including, as a minimum, the matters set out below: <ul style="list-style-type: none"> (i) time related preliminaries; (ii) event based preliminaries; (iii) design and documentation; (iv) construction (for each ramp and each motorway stage); (v) traffic management and control systems; and (vi) other items as reasonably required by the RTA; (c) provide unit rate costs of the various pavement types which may be used for the Project to satisfy the requirements of the agreed Scope of Works and Technical Criteria; (d) be based on the agreed D&C Terms; (e) be based on the assumed conditions of Planning Approval referred to below in this item 6; and (f) specify, for the sole purpose of the D&C Capital Cost Amount: <ul style="list-style-type: none"> (i) a proposed date for Financial Close; (ii) a period to achieve construction completion; and (iii) any escalation costs which would be applied to the D&C Capital Cost Amount were Financial Close to be delayed. <p>The D&C Capital Cost Amount must include for assumed conditions of Planning Approval which will incorporate conditions and requirements that are likely to be imposed by the Department of Planning or by any other Authority in connection with the Project.</p>
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7.	M5 West Widening Deed and Commitment Deed	RTA	<p>The agreed M5 West Widening Deed will set out the commercial framework for the Project, developed through a Commercial Terms Schedule (listing all issues relevant to the commercial agreement and the parties' respective positions on each issue).</p> <p>The RTA will use reasonable endeavours to prepare and provide to Interlink Roads a draft of the initial list of issues to be included in the Commercial Terms Schedule within 14 days of the Effective Date. The parties will then develop and set out their respective positions on these issues.</p> <p>In addition, there will be a separate Commitment Deed (to cover the matters contemplated in the definition of "Commitment Deed" in clause 7).</p>
8.	Equity and debt financing documents and due diligence reports for the Project	Interlink Roads	
9.	Such other document as the RTA and Interlink Roads agree to be a "Key Deliverable" for the purposes of this agreement	As agreed between the RTA and Interlink Roads	

1.2 Attachment 1 to this Schedule 1 sets out a high level draft overview of how the Key Deliverables specified as items 2, 3 and 7 in clause 1 of Schedule 1 interrelate from a contract structure perspective for the purposes of the Project.

2. **Purposes of the Key Deliverables**

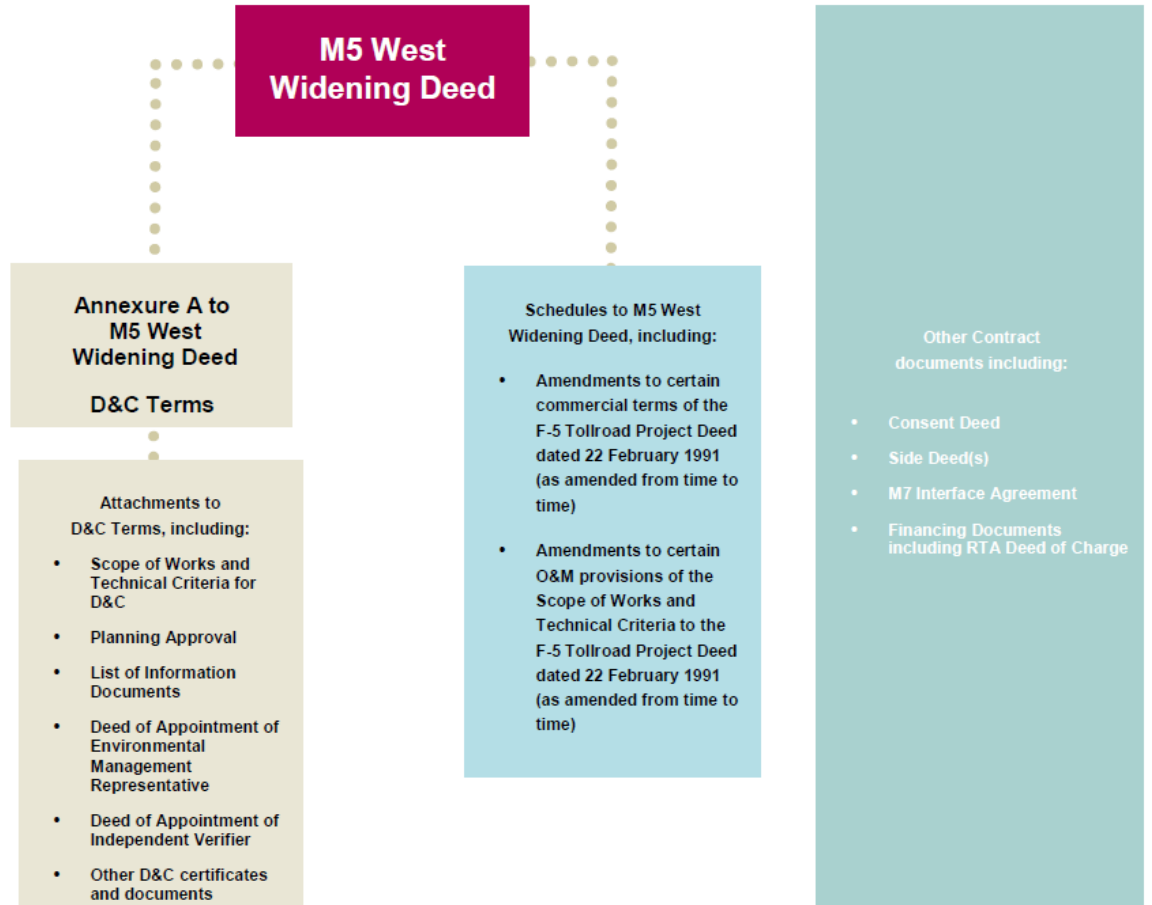
2.1 In addition to the purposes set out elsewhere in this Schedule 1, the RTA and Interlink Roads acknowledge and agree that the purposes of the Key Deliverables are to (among other things) achieve all of the following:

- (a) to enable the parties to seek to reach agreement on the key issues necessary to enable the parties to consider, subject to any necessary NSW Government approvals and any approvals required by Interlink Roads, whether to enter into a Commitment Deed;
- (b) to ensure and demonstrate that the NSW Government and the RTA will achieve value for money if the RTA enters into a Commitment Deed; and
- (c) to provide information and data to enable the RTA to progress the Environmental Assessment for the Project.

- 2.2 The RTA and Interlink Roads acknowledge and agree that the Key Deliverables are not an exhaustive statement of the documents that will need to be produced and agreed between them for the purposes of considering whether to enter into a Commitment Deed and that each will work cooperatively to prepare, and seek to negotiate and agree, any other documents which are required for this purpose.
- 2.3 The RTA and Interlink Roads acknowledge and agree that:
- (a) where a party is nominated as being the party primarily responsible for the preparation of the Key Deliverable in clause 1.1 of this Schedule 1, that party must produce the initial and subsequent drafts of the Key Deliverable to the standard set out or prescribed for that Key Deliverable in this Schedule 1 and any other standards unanimously agreed to by the Project Control Group;
 - (b) it is intended that the parties will prepare and seek to negotiate and agree each Key Deliverable in accordance with the high level procurement process map and target program set out in Attachment 1 to Schedule 2;
 - (c) each Key Deliverable will be negotiated in the context of the other Key Deliverables; and
 - (d) the preparation and negotiation of each Key Deliverable will not be complete unless and until each of the RTA and Interlink Roads agree that the relevant Key Deliverable is agreed.

Attachment 1 to Schedule 1

DRAFT PROPOSED CONTRACT STRUCTURE



Schedule 2

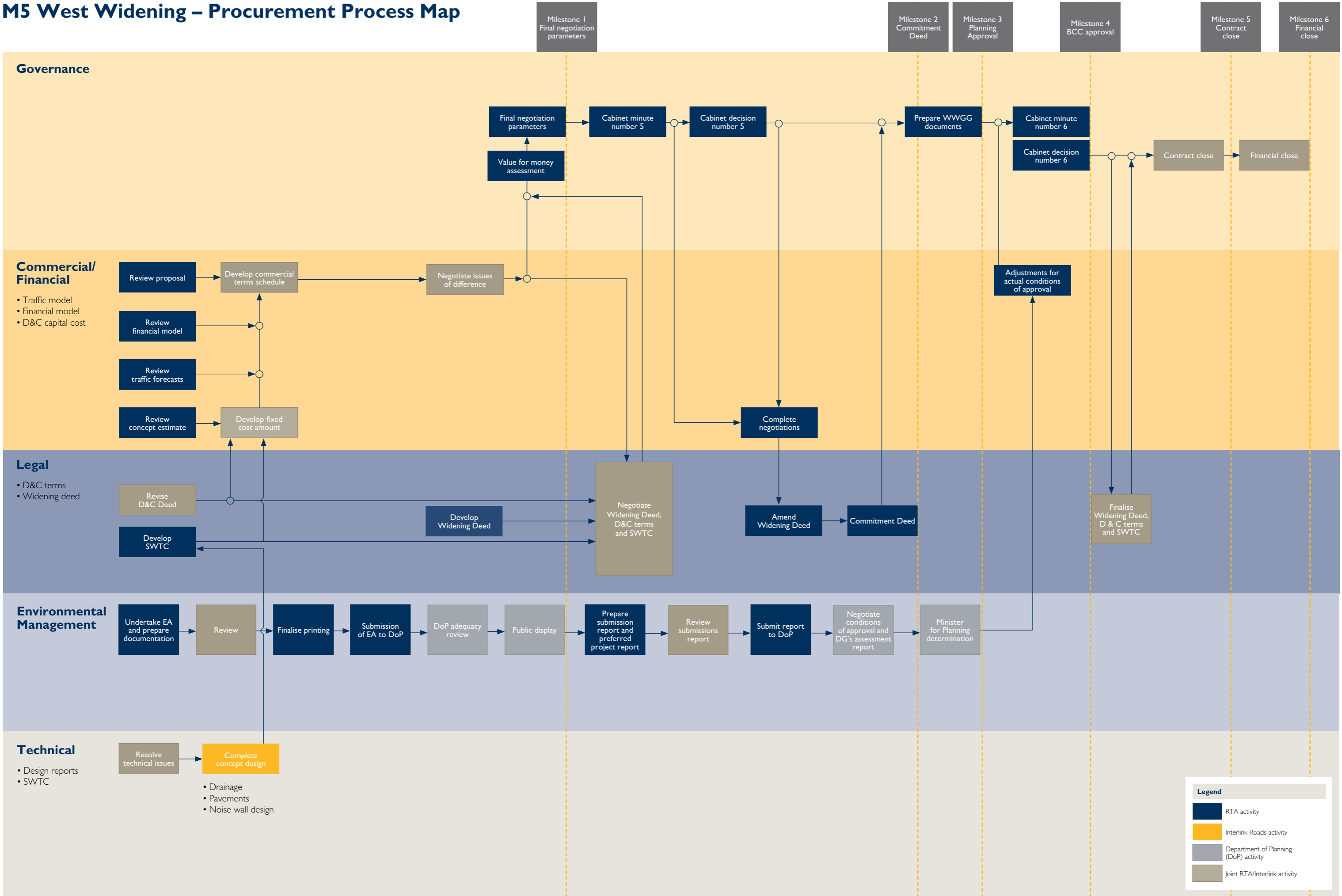
HIGH LEVEL PROCUREMENT PROCESS MAP AND TARGET PROGRAM FOR KEY DELIVERABLES

1. The RTA and Interlink Roads have prepared a high level procurement process map and target program of the process and timing by which they propose to prepare, and seek to negotiate and agree, the Key Deliverables as may be developed by the Project Control Group. It is noted that the high level procurement process map and target program:
 - (a) will not provide an exhaustive list of the issues and matters to be negotiated by the parties for the purposes of finalising each Key Deliverable;
 - (b) will include target dates for the achievement of milestones (as may be adjusted from time to time by unanimous agreement of the Project Control Group) against which progress towards the finalisation of the Key Deliverables will be monitored; and
 - (c) assumes that the parties will participate in a series of workshops and meetings so as to progressively develop, review and resolve the issues identified in the high level procurement process map and target program and to seek to progress finalisation of the Key Deliverables.
2. As part of the series of workshops and meetings referred to in clause 1(c) of this Schedule 2:
 - (a) Interlink Roads must provide all technical and other information reasonably required by the RTA to facilitate the negotiation and finalisation of the Key Deliverables;
 - (b) external consultants of the RTA or Interlink Roads may attend and facilitate and/or take part in the workshops and meetings;
 - (c) if requested by the RTA, Interlink Roads must prepare a position paper on a matter related to any Key Deliverable which is then being negotiated between the parties (taking account of any agreed program and the Cost Plan); and
 - (d) each party must take into account comments from the other party as contemplated in clause 5.

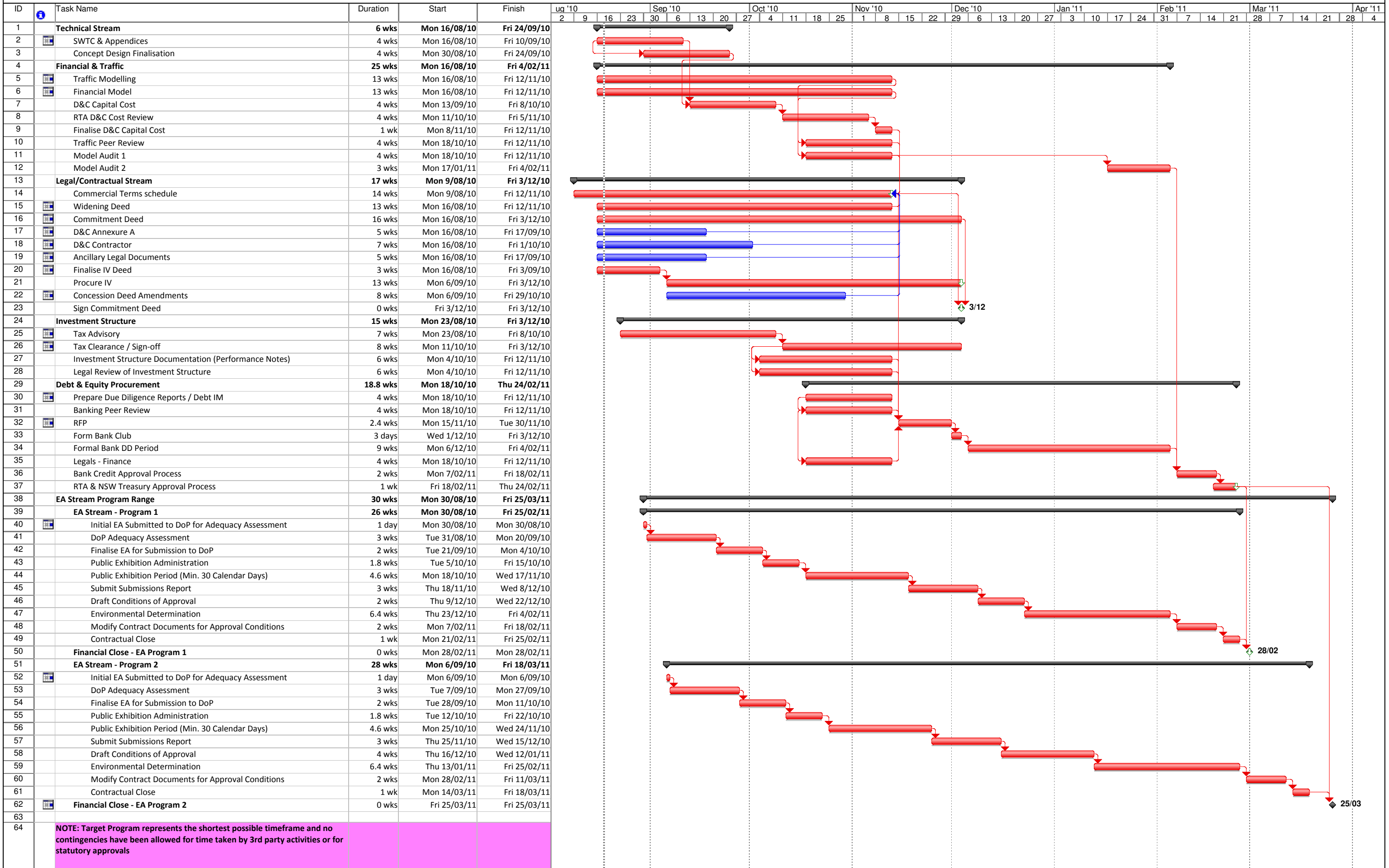
Attachment 1 to Schedule 2

HIGH LEVEL PROCUREMENT PROCESS MAP AND TARGET PROGRAM

M5 West Widening – Procurement Process Map



M5 West Widening - PCA Target Program to FC



Project: M5 West Widening - Target PCA Program to FC
Date: Wed 18/08/10 Rev: H

Task Progress Summary Project Summary Deadline

Critical Task Milestone External Tasks Group By Summary

Schedule 3

GOVERNANCE PROTOCOL

Section	Description of Content
1. Background	<p>(a) Interlink Roads holds, under a Project Deed entered into with the RTA, the tollway concession on the M5 Motorway until 2023.</p> <p>(b) An unsolicited proposal to upgrade the M5 Motorway was received from Interlink Roads on September 26, 2008.</p> <p>(c) Approval from the Budget Committee of Cabinet to negotiate directly with Interlink Roads regarding the Project scope and cost estimates was received on December 16, 2008.</p> <p>(d) Pursuant to the Initial Agreement, Interlink Roads agreed, among other things, to develop and provide the Updated Proposal.</p> <p>(e) Following receipt of the Updated Proposal the RTA have agreed to continue to work with Interlink Roads on the terms of this agreement.</p> <p>(f) A NSW Government steering committee has been formed, chaired by the Department of Premier and Cabinet and including representatives from the RTA and Treasury, to direct negotiations. An RTA Senior Review group has been formed, including four RTA directors, to consider and make decisions on the Updated Proposal and negotiations towards a project agreement with Interlink Roads.</p>
2. Governance Structure	See Attachment 1 to this Schedule 3 which sets out a general diagrammatical overview.
3. Project Control Group	<p>(a) A Project Control Group (PCG) must be formed to monitor the performance of the parties and govern the administration of activities to be carried out during the term of this agreement.</p> <p>(b) The objectives of the PCG are to:</p> <ul style="list-style-type: none"> (i) assist in the resolution of any matters referred to the PCG by either the RTA or Interlink Roads; and (ii) monitor the progress of the activities to be carried out under this agreement. <p>(c) The PCG will include two representatives ("PCG Representatives") each from Interlink Roads and the RTA, as follows, and such other members as the parties may agree from time to time or as a party may nominate in substitution for the members set out below:</p> <ul style="list-style-type: none"> (i) Interlink Roads <ul style="list-style-type: none"> (A) Jonathan Hunt, M5 Widening Project Manager, Interlink Roads; and

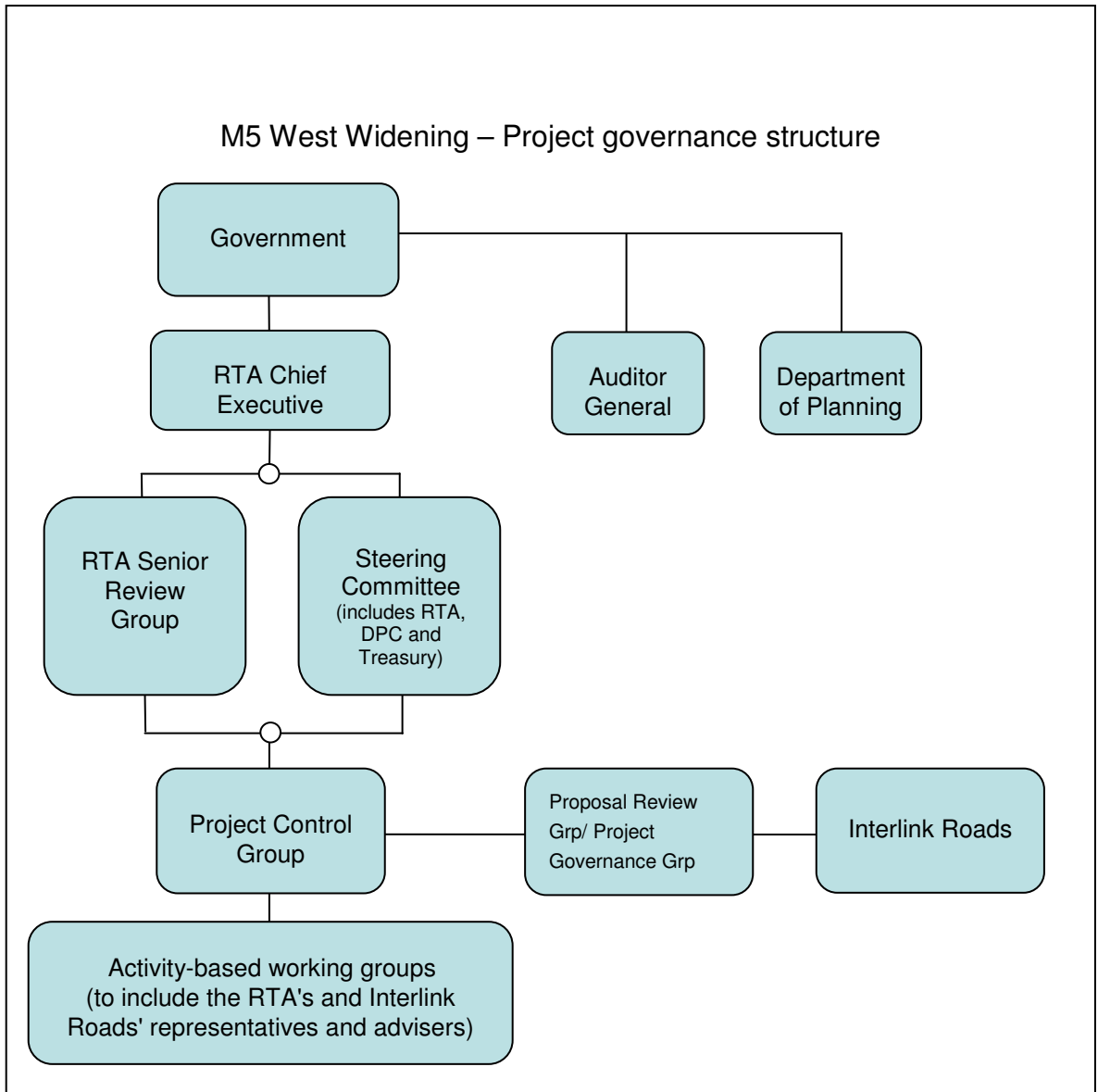
	<p>(B) Raymond Golzar, General Manager Australian Development, Transurban.</p> <p>(ii) RTA</p> <p>(A) Paul Goldsmith, General Manager, Motorway Projects; and</p> <p>(B) Matthew Webb, Corporate Financial Strategy.</p> <p>(d) The persons referred to above may appoint delegates to attend PCG meetings in their absence, who are authorised to act on their behalf.</p> <p>(e) The nominated Interlink Roads and RTA PCG Representatives will:</p> <p>(i) receive (or delegate receipt of) all communications between the RTA and Interlink Roads in relation to this agreement;</p> <p>(ii) facilitate all meetings between the RTA and Interlink Roads in relation to this agreement;</p> <p>(iii) transmit (or delegate transmittal of) all communications between the RTA and Interlink Roads in relation to this agreement; and</p> <p>(iv) escalate any issues which cannot be resolved by the PCG to the Business Directors of both parties.</p> <p>(f) The current nominated Interlink Roads and RTA Business Directors are:</p> <p>(i) Interlink Roads</p> <p>(A) Rex Wright, General Manager.</p> <p>(ii) RTA</p> <p>(A) Geoff Fogarty, Director, Infrastructure Services.</p> <p>(g) The Business Directors will be the first point of contact for either party in respect of issues in relation to this agreement which (it considers) have not been properly addressed by the respective PCG Representatives.</p> <p>(h) If the Business Directors are unable to resolve any issue under this agreement, the matter may be escalated by either party to the Interlink Roads Chairman and the RTA Chief Executive for resolution.</p>
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<p>4. Communication and Administration</p>	<p>(a) The PCG are to meet at least fortnightly or at such other times as may be agreed between the RTA and Interlink Roads for the purposes set out in section 3(b) of this Schedule 3.</p> <p>(b) A PCG meeting agenda is to be developed and agreed by both parties. The meetings are to be chaired alternately by the PCG Representatives. Meeting minutes are to be recorded alternately by the parties and issued for concurrence from the other party within 1 week of the meeting date.</p> <p>(c) All meetings of the PCG (as well as meetings between PCG Representatives) shall be held for discussion purposes only. Without limiting the role of the PCG as contemplated elsewhere in this agreement (for example, in clause 15, clause 2.3(a) of Schedule 1 and clause 1(b) of Schedule 2), nothing said at any of those meetings shall be binding upon the parties. The parties shall only be bound by such matters as are conveyed to the parties in writing and signed by the authorised Directors or Chief Executives.</p> <p>(d) So as to promote integrity and probity in the activities to be undertaken under this agreement, meetings may be conducted in the presence of the Probity Adviser if commercial matters are to be discussed.</p> <p>(e) Any issues of a probity nature arising from activities or issues under this agreement may be raised by either party directly with the Probity Adviser.</p> <p>(f) The parties may agree, through the PCG, to establish additional project management groups or tools.</p>
<p>5. Probity Adviser</p>	<p>(a) The RTA has appointed a Probity Adviser, O'Connor Marsden and Associates.</p> <p>(b) The Probity Adviser will:</p> <ul style="list-style-type: none"> (i) advise the RTA on the development of accountable and transparent processes and procedures, in accordance with relevant NSW Government, ICAC and RTA policies; (ii) review Project documents and attend commercial meetings (if any) as appropriate; (iii) review executed confidentiality deeds and conflict of interest declarations; and (iv) assist and advise the RTA in addressing probity issues as they arise. <p>(c) The Probity Adviser is not part of any negotiation team nor involved in decision making activities.</p>
<p>6. Development Principles</p>	<p>(a) It is acknowledged by both parties that the following development principles and critical issues will need to be addressed in any submissions to the NSW Government in relation to the Project.</p> <p>(b) Interlink Roads must assist the RTA to provide sufficient information to adequately address the development principles.</p> <p>(c) The broad development principles are to:</p> <ul style="list-style-type: none"> (i) support and align with the NSW Government's State Plan, Metropolitan Strategy, Urban Transport Statement and Infrastructure Strategy;

	<ul style="list-style-type: none">(ii) enhance the strategic road network in Sydney's southwest to support economic growth;(iii) improve access and connectivity between key residential, employment and educational precincts in Sydney's southwest;(iv) improve travel times by reducing congestion during peak periods for the benefit of local and regional traffic;(v) improve safety and incident management for all road users and surrounding communities;(vi) provide adequate involvement of the community in the development of the Environmental Assessment; and(vii) ensure acceptable levels of environmental and social impacts during construction and operation phases.
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Attachment 1 to Schedule 3

M5 West Widening – Project Governance Structure



Schedule 4

DRAFT SCOPE OF WORKS AND TECHNICAL CRITERIA

The Draft Scope of Works and Technical Criteria comprises the documents identified in the table below.

Document Reference	Document Details
SWTC Main Text	Main Text
Appendix 1	Location Sketch
Appendix 2	Project Site and Maintenance Site
Appendix 3	Property Adjustments
Appendix 4	Additional Environmental Requirements
Appendix 5	Exceptions - Non Conformances
Appendix 6	RTA General Specifications
Appendix 7	Urban and Landscape Design Criteria
Appendix 8	Pavement Performance, Configuration and Extent
Appendix 9	Reference Documents
Appendix 10	Traffic Control Signal Requirements
Appendix 11	RTA Technical Specifications
Appendix 12	Bridge Inventory Details
Appendix 13	Signposting Requirements
Appendix 14	Project Plan Requirements
Appendix 15	Spare
Appendix 16	Typical Cross Sections
Appendix 17	Access Requirements During the Company's Work
Appendix 18	Traffic Management Requirements
Appendix 19	Spare
Appendix 20	Design Information

Document Reference	Document Details
Appendix 21	M5 East Motorway Requirements
Appendix 22	M7 Motorway Requirements
Appendix 23	Road Occupancy Licensing Guideline
Appendix 24	Company Documentation Schedule
Appendix 25	Certification Schedule
Appendix 26	Project Signposting
Appendix 27	Spare
Appendix 28	Local Road Works
Appendix 29	Asset Items and Sub-Items – Specified Design Lives
Appendix 30	Company's Concept/Detailed Design
Appendix 31	Company's Urban and Landscape Plan
Appendix 32	Company's Specifications
Appendix 33	Maintenance of Local Roads
Appendix 34	Spare
Appendix 35	Initial Project Management Plan
Appendix 36	Initial Environmental Management Plan
Appendix 37	Spare
Appendix 38	Initial Construction Plan
Appendix 39	Spare
Appendix 40	Initial Community Involvement Plan
Appendix 41	Initial Occupational Health, Safety and Rehabilitation Management Plan
Appendix 42	Spare
Appendix 43	Initial Traffic Management and Safety Plan
Appendix 44	Initial Project Training Plan

Document Reference	Document Details
Appendix 45	Industrial Relations Strategy
Appendix 46	Spare
Appendix 47	Operations Management and Control Systems Requirements
Appendix 48	Spare
Appendix 49	Spare
Appendix 50	Requirements for Intelligent Transport Systems
Appendix 51	Requirements for Information and Communications Technology Systems
Appendix 52	Spare
Appendix 53	Requirements for the Operation of the Road Network and Traffic System
Appendix 54	Spare

Schedule 5

DOCUMENTS, MATERIALS AND OTHER INFORMATION PROVIDED TO THE RTA

The documents, materials and other information referred to in clause 33(a)(i) are identified in the table below.

Volume of Part 2 of the Update to Proposal	Description	Document Reference
2	Aesthetics	
	Urban Design - Concept	SYU-001725
3	Technical Details	
	Geometric Design	M5W-RP-ER-0011
	Drainage and Water Quality	M5W-RP-ED-0001
	Structural Design	M5W-RP-ES-0001
	Pavement Design	M5W-RP-EP-0002
	Operations Management Control	M5W-RP-IT-0002
4	Technical Details	
	Geotechnical Investigations Report	M5W-RP-EG-0001
	Specifications	Appendix 6 & 11
	Road Safety Audit	M5W-RP-ET-0002
	Asset Item & Sub-Item Design Lives	Appendix 29
5	Technical Details	
	General	M5W-EZ-DG-0001 to 0302
	Roadworks	M5W-ER-DG-0001 to 0459
6	Technical Details	
	Drainage & Utilities	M5W-ED-DG-0001 to 0372
	Geotechnical	M5W-SK-EG-0001 to 0021
	Pavement	M5W-EP-DG-0001 to 0140
	Structures	M5W-EB-DG-0001 to 0102
	Operations Management Control	M5W-IT-DG-0001 to 0120
7	Delivery Strategy	

Volume of Part 2 of the Update to Proposal	Description	Document Reference
	Initial Integrated Quality, Safety & Training Plan (Including Industrial Relations & Records Management Plans)	IQSTP
	Initial Project Management Plan	IPMP
	Initial Environmental Management Plan	ICEMP
8	Delivery Strategy	
	Initial Design Management Plan	DMP
	Initial Construction Plan	CMP
	Initial Community Involvement Plan	CIP
	Initial Traffic Management & Safety Plan	TMP
9	Delivery Strategy	
	D&C Program	NA
	Traffic & Strategy Arrangements during the Contractor's Work	M5W-EX-DG-0001 to 0808
12	Options & SWTC Related Items	
	Group 1 – Base Scope Options	NA
	Item 1.0 - Summary	NA
	Item 1.1 – Noise Attenuation	NA
	Item 1.2 – Toll Plaza Works	NA
	Item 1.3 – Western Tie-In Works (Excluding Bridge Works) – Provisional	NA
	Group 2 – Future Proofing Works	NA
	Item 2.1 – E/B Wearing Course Fairford Road to King Georges Road	NA
	Item 2.2 – VSLs Works	NA
	Item 2.3 – Safety Audit Compliance	NA
	Item 2.4 – OMCS – Ramp Metering Pits & Conduits	NA
	Item 2.5 – Ramp Geometry Compliance	NA
	Group 3 – Options to Upgrade Design to Current SWTC Requirements	NA
	Item 3.1 – Survey Requirements for G73	NA

Volume of Part 2 of the Update to Proposal	Description	Document Reference
	Item 3.2 – Upgrade De Meyrick Bridge	NA
	Item 3.3 – Line of Sight	NA
	Item 3.4 – Existing Motorway Height Clearance	NA
	Item 3.5 – Sheet Flows	NA
	Item 3.6 – Foundation Treatments	NA
	Item 3.7 – Water Quality – Separation of Cross Drainage	NA
	Item 3.8 – Drainage – Upgrade Major Noncompliant Pipes for 1 in 20 yr ARI	NA
	Item 3.9 – Drainage – Increase Pipes from 375mm to 450mm	NA
	Item 3.10 – Flood Modelling – Desktop Study Only	NA
	Item 3.11 – Sedimentation Basins to meet the 2% Detention Capacity Criteria	NA
	Item 3.12 – Minimum 2.0m Physical Separation in all OMCS Backbone Trenches	NA
	Item 3.13 – Connect all off Motorway Devices to backbone Trench	NA
	Item 3.14 – Connection of CCTV to Backbone Trench	NA

Schedule 6

INITIAL COST PLAN

Schedule 7

DRAFT D&C TERMS

Annexure A – Design, Construction and Commissioning of the M5 West Widening

Note to readers: This Annexure A has been prepared ~~to assist Interlink Roads in the procurement of its early contractor involvement for the M5 West Widening Project. However, it is issued~~ on the basis that:

- the draft ~~is preliminary in nature and~~ is subject to further review and amendment by RTA and Interlink Roads. No provision in this document should be taken as representing RTA's or Interlink Roads' final or approved position in relation to the subject matter of the provision;
- RTA and Interlink Roads reserves the right to raise additional or different matters not currently set out in the draft;
- the draft reflects certain preliminary issues raised by Interlink Roads and also highlights specific issues which are still to be resolved between the parties; and
- the draft will need to be developed and read in light of other project documents still to be prepared such as the Scope of Works and Technical Criteria. To illustrate this issue, the M5 West Widening Deed (to which this Annexure A will be annexed) will deal with other D&C related matters relevant to the carrying out of the project – including conditions precedent, confidentiality and publicity, GST, default and termination and dispute resolution.

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Annexure A – Design, Construction and Commissioning of the M5 West Widening

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Annexure A:

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

- (a) to perform the Company's Work;
- (b) in connection with the Project Site and any Extra Land; or
- (c) for the use of the M5 West Widening and the M5 Motorway.

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or things otherwise of value.

Authority means:

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

Business Day means any day on which banks are generally open for business in Sydney (other than Saturdays, Sundays and public holidays).

Certificate of Construction Completion means a certificate substantially in the form of Schedule 2 certifying that Construction Completion of a Stage has occurred.

Certification Schedule means Appendix ## to the Scope of Works and Technical Criteria.

Change means any variation or change to the Project Works or the Temporary Works and includes any addition, increase, decrease, omission, deletion, demolition or removal to or from the Project Works or the Temporary Works.

[RTA note: Interlink has sought to include a reference to "O&M Work" in the above definition. Not agreed by RTA. These D&C Terms should only cover design and construct aspects]

Change Costs means:

- (a) -where a Change increases the scope or the cost of the Company's Work, the reasonable costs incurred by the Company as a result of carrying out the Change (including a reasonable amount, which is agreed to be at [insert]%, for the

~~Contractor's overhead and profit associated with the Change); (including any increased construction costs, operating costs, maintenance costs or financing costs, whether in relation to the M5 Motorway or the Project Works).~~

- (b) ~~where a Change increases the operating and maintenance costs under the M5 Motorway Deed, the reasonable increased operating and maintenance costs incurred by the Company as a result of carrying out the Change (including a reasonable amount, which is agreed to be at [insert]%, for overhead and profit associated with the Change); and~~
- (c) ~~delay costs reasonably incurred by the Company in carrying out the Change (including any reasonable interest and fees payable under the [Debt Financing Documents] during the period of the delay).~~

Change in Law means ~~a change to, or new, legislation of the State of New South Wales, including regulations and subordinate legislation, which:~~

- (a) ~~takes effect after the date of the M5 West Widening Deed, and~~
- (b) ~~results in an increase in the cost of performance of the Company's obligations under the M5 West Widening Deed beyond that reasonably anticipated at the time of entering into the M5 West Widening Deed, due to a change, after the date of the M5 West Widening Deed, to the legislation of the State of New South Wales, including all regulations and subordinate legislation and the enactment of new legislation.~~

[AAR Note: In the current environment, Interlink considers that the definition of Change in Law should include changes to environmental and road user charging laws among others. Interlink also considers that the definition should extend beyond NSW State Law.]

[RTA note: The definition should only relate to design and construct aspects and accordingly, "environmental and road user charging laws" should not be captured. RTA is separately considering position "beyond NSW State Law"]

Change Savings means where a Change decreases the scope or the cost of the Company's Work, the savings arising out of or in connection with the Change (including any savings in relation to construction costs, operating costs, maintenance costs, financing costs and acceleration savings, whether in relation to the M5 Motorway or the Project Works).

Claim includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, the M5 West Widening Deed;
- (b) arising out of, or in any way in connection with, the Project Works or ~~either any~~ Party's conduct prior to the date of the M5 West Widening Deed; or
- (c) otherwise at law or in equity including:
- (i) by statute;
- (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
- (iii) for restitution, including restitution based on unjust enrichment.

[RTA note: Interlink propose a qualification to the above definition so that it does not apply prior to the date of the M5 West Widening Deed. Not agreed by RTA]

Community Involvement Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Community Relations Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

Company Documentation Schedule means Appendix ## to the Scope of Works and Technical Criteria.

Company's Representative means [] or any other persons appointed from time to time by the Company under clause 5.2.

Company's Work means all things and tasks which the Company is, or may be, required to carry out or do, to comply with its obligation under the M5 West Widening Deed, including all things and tasks to design and construct the Project Works and the Temporary Works.

Concept Design means the concept design prepared by the Company and included in Appendix ## to the Scope of Work and Technical Criteria.

Construction Completion means, **in respect of a Stage**, when:

- (a) the Project Works comprised in the Stage have been completed in accordance with the M5 West Widening Deed except for minor Defects which:
 - (i) do not prevent the Stage or the M5 Motorway from being reasonably capable of being used for the safe, efficient and continuous passage of motor vehicles;
 - (ii) the Independent Verifier determines that the Company has reasonable grounds for not promptly rectifying; and
 - (iii) can be rectified without prejudicing the safe, efficient and continuous passage of vehicles on the Stage and the M5 Motorway; and
- (b) the Company has done everything which the M5 West Widening Deed requires the Company to do as a condition precedent to Construction Completion of the Stage, including those things set out in Schedule 3.

Construction Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

Construction Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Contamination:

- (a) means any waste, Pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), has the meaning given to Contamination in the *Contaminated Land Management Act 1997 (NSW)*.

Contractor means [].

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

Date for Construction Completion means:

- (a) in respect of Stage 1, the date which is [] months after the Satisfaction Date;
- (b) in respect of Stage 2, the date which is [] months after the Satisfaction Date;
- (c) in the case of Stage 3, the date which is [] months after the Satisfaction Date;
and
- (d) in the case of Stage 4, the date which is [] months after the Satisfaction Date.

[Note – to discuss: staging requirements (if any) for the Project. See also RTA note in clause 9.2]

Date for Final Completion means the date which is [] months after the Satisfaction Date.

Date of Construction Completion means, in respect of a Stage, the date of Construction Completion of the relevant Stage certified in the Certificate of Construction Completion in accordance with clause 10.2.

Date of Final Completion means the Date of Construction Completion of the final Stage to reach Construction Completion.

Deed of Appointment of Independent Verifier means the deed so titled between the Company, RTA and the Independent Verifier dated on or about the date of the M5 West Widening Deed.

[AAR Note: The Independent Verifier carries out important functions under the Contract that will be determinative of the D&C Contractor's rights and liabilities. Consequently, the D&C Contractor should also be a party to the Deed of Appointment of Independent Verifier]

[RTA note: not agreed by RTA. It is noted that Interlink have proposed various consequential changes arising as a result of the issue which they have raised. For the purposes of this draft, those other changes are not specifically noted in this draft]

Deed of Appointment of Environmental Management Representative means the deed so titled between the Company, RTA and the Environmental Management Representative dated on or about the date of the M5 West Widening Deed.

Defect means any:

- (a) defect, shrinkage, movement, deficiency, subsidence, fault or omission in the Project Works or the Temporary Works; or
- (b) other aspect of the Project Works or the Temporary Works,

which is not in accordance with the requirements of the M5 West Widening Deed.

Defects Correction Period means a period referred to in clauses 11.4, 11.5, 11.6 or 11.7.

Design Documentation means all design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations and drawings **and all drafts, editions, alterations and adaptations**) in computer readable and written forms, or stored by other means, which the Company or any other person creates in

performing the Company's Work (including the design of the Temporary Works) **which, for the avoidance of doubt, excludes the Concept Design.**

Design Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

Design Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria.

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Documents means:

- (a) the Project Approval; and
- (b) Appendix ## to the Scope of Works and Technical Criteria.

Environmental Management Plans means the Project Plans of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Environmental Management Representative or **EMR** means [*nominate*] or such other persons as may be engaged by RTA and the Company in accordance with the Deed of Appointment of Environmental Management Representative.

Environmental Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

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

Existing Operations means all of the obligations of the Company under the M5 Motorway Deed.

Extra Land means the land referred to in clause 2.3(a)(i).

Final Completion means every Stage having achieved Construction Completion.

Final Determination means a decision of a court:

- (a) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
- (b) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made.

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

Hold Point means the hold points specified in the Scope of Works and Technical Criteria.

Independent Verifier means [], ACN [] or such other person as may be agreed in writing by RTA and the Company.

Information Document means the following documents in any format or medium including any electronic form:

- (a) the documents specified in Schedule 11;
- (b) any other information or document provided to the Company before, on or after the date of the M5 West Widening Deed and which was or is expressly stated to be an Information Document; and
- (c) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a) or (b), unless such information or document is otherwise expressly stated to form part of the M5 West Widening Deed.

Intellectual Property Rights means all present and future rights throughout the world conferred by law or in relation to any copyright, patent, invention, trade secret, know how, registered and unregistered design, circuit layouts, trademarks or name or other protected right whether or not registrable, registered or patentable. These rights include:

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

Law means:

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

Local Road means any road or road reserve other than the M5 Motorway which:

- (a) crosses;
- (b) is adjacent to; or
- (c) is in any way affected by,

the Project Works or the Temporary Works.

Local Road Works means the modification, reinstatement and improvement of a Local Road which the Company must design and construct and hand over to RTA or the relevant Authority in accordance with the M5 West Widening Deed and as specified in section ## of the Scope of Works and Technical Criteria.

Loss includes:

- (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and

- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

Maintenance Manual means the maintenance manual prepared in accordance with the requirements of the M5 Motorway Deed and further developed to incorporate the Maintenance Work associated with the M5 West Widening.

Maintenance Work means the work which the Company is or may be required to carry out under the M5 Motorway Deed in order to operate, maintain and repair the M5 West Widening.

Material Adverse Effect means a material adverse effect on **[insert]**

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

M5 Motorway means the permanent works designed and constructed in accordance with the M5 Motorway Deed and, following Construction Completion of a Stage, includes that Stage.

M5 Motorway Deed means the deed titled "F-5 Tollroad Project Deed" between the Roads and Traffic Authority of New South Wales, the Honourable Wallace Telford Murray MP and Interlink Roads Pty Ltd, dated 22 February 1991 as amended (including pursuant to the M5 West Widening Deed).

M5 West Widening means the road and other physical works, facilities, systems and Services described in section ## of the Scope of Works and Technical Criteria including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Project Site but which excludes:

(a) -the M5 Motorway (as defined immediately prior to the Satisfaction Date); and

(b) any Plant (as defined in the M5 Motorway Deed immediately prior to the Satisfaction Date).

M5 West Widening Deed means the deed to which this Annexure A is attached and forms part, together with all schedules, ~~other~~ annexures and exhibits to it.

M5/M7 Interface Deed means **[insert]**

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

Native Title Application means any claim or application under any Law or future Law relating to native title, including any application under section 61 of the *Native Title Act* 1993 (Cth), except for any such claim or application which is in any way materially based or reliant upon the existence of Artefacts on, under, near or around the Project Site or the Temporary Areas.

[RTA note: Interlink has sought the deletion of the proviso in the above definition. Not agreed by RTA]

Occupational Health, Safety and Rehabilitation Management Plan means the Project Plan of that name prepared by the Company referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

[RTA note: Interlink has sought the inclusion of a definition of "O&M Work". Not agreed by RTA. These D&C Terms should only cover design and construct aspects]

Overall D&C Program means the overall program for design and construction activities which is Exhibit C to the M5 West Widening Deed and updated in accordance with clause 5.12.

Parcel means a parcel of land and property of which RTA is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

Party means each of the Minister, RTA and the Company and **Parties** means both each of them.

Personal Information has the meaning given to that term in:

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

Pollution includes any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

Privacy Acts means:

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

Project means the design, construction and commissioning of the Project Works and the Temporary Works in accordance with the M5 West Widening Deed.

[RTA note: Interlink has sought the expansion of the above definition to also cover "the operation, maintenance and repair of the M5 Motorway in accordance with the M5 Motorway Deed". Not agreed by RTA. These D&C Terms should only cover design and construct aspects]

Project Approval means the approval dated [] issued by the Minister for Planning pursuant to Part 3A of the EP&A Act in respect of the Project Works and the Temporary Works and all conditions to it, all of which appears as Schedule 5 and includes all documents incorporated by reference.

Project Assets means [insert]

Project Control Group means the group referred to in clause 5.7.

~~**Project Review Group** means the group referred to in clause 5.8.~~

Project Documents means:

[Note – still to consider this definition further]

- (a) the M5 West Widening Deed (including for the avoidance of doubt this Annexure A);
- (b) the Deed of Appointment of Independent Verifier;

-
- (c) the Deed of Appointment of Environmental Management Representative;
 - (d) the RTA Security; and

any other document the Parties agree is a Project Document for the purposes of the M5 West Widening Deed or the Project.

Project Industrial Relations Plan means the plan of that name to be prepared by the Company in accordance with clause 5.25.

Project Management Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Project Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

Project Plan means each of the:

- (a) Quality Plan;
- (b) Project Management Plan;
- (c) Design Plan;
- (d) Construction Plan;
- (e) Community Involvement Plan;
- (f) Traffic Management and Safety Plan;
- (g) Occupational Health, Safety and Rehabilitation Management Plan;
- (h) Project Training Plan; and
- (i) Environmental Management Plans^{7.1}.

as each such plan may be updated, amended and developed under clause 5.13.

Project Review Group means the group referred to in clause 5.8.

Project Site means the land and airspace more particularly described as the Project Site in the Site Access Schedule.

[AAR Note: This concept will need to be amended to distinguish between land already covered by the Interlink lease and off-lease works]

[RTA note: The above issue is still to be considered]

Project Training Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Project Works means the physical works which the Company must design, construct and complete under the M5 West Widening Deed, including:

- (a) the M5 West Widening;
- (b) the Service Works;

- (c) the Local Road Works; and
 - (d) the Property Works,
- but excluding the Temporary Works.

Property Works means:

- (a) those works described in section ## of the Scope of Works and Technical Criteria; and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of,any property (including any structure thereon), including such property located outside of the Project Site, which is affected by the Company's Work is maintained to at least the standard that it was in immediately prior to the date of the M5 West Widening Deed including:
 - (i) fences to separate the property located outside of the Project Site from property located within the Project Site;
 - (ii) access routes;
 - (iii) drainage structures; and
 - (iv) landscaping and reinstatement works.

Quality Manager means the person appointed to that position under clause 5.3(b) as at the date of the M5 West Widening Deed or any person appointed as a replacement under clause 5.3(b).

Quality Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Recognised Insurance Market means the Australian and London Insurance Markets.

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

Related Entity has the same meaning as in the Corporations Act.

Relevant Insurer means an insurer with a claims paying ability rating of at least "A" by AM Bet or another recognised insurance rating agency.

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

Road Occupancy Licence is a licence issued by the RTA that authorises the occupation of a section of the road network that would normally be available for traffic.

RTA Assistant Representative has the meaning given in clause 5.1(b).

RTA Consent Deed means insert.

RTA Security means the deed of charge dated on or about the date of the M5 West Widening Deed between RTA as chargee and the Company as chargor over, inter alia, the

Project Assets as security for the performance by the Company of its obligations under the M5 West Widening Deed.

RTA Surveillance Officer has the meaning given in clause 5.1(c).

RTA's Representative means:

- (a) the person appointed by RTA under clause 5.1(a)(i); or
- (b) any other person appointed from time to time by RTA under clause 5.1(a)(ii).

S&P means Standard & Poor's (Australia) Pty Limited, ACN 007 324 852 and its successors and assigns.

Satisfaction Date has the meaning given in the M5 West Widening Deed.

Scope of Works and Technical Criteria means the document and drawings set out in Exhibit A to the M5 West Widening Deed.

Security Bonds means the unconditional and irrevocable bank undertakings referred to in clause 12.1.

Service means any service or item of infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway and electronic communications services (except those communication systems provided as part of the Company's Work as generally described in Appendix ## ~~ef~~to the Scope of Works and Technical Criteria).

Service Works means the construction, modification or relocation of Services, all of which are to be designed and constructed by the Company and handed over to RTA, an Authority or ~~to~~ another person in accordance with the M5 West Widening Deed.

Site Access Schedule means Exhibit E to the M5 West Widening Deed.

Stage 1 means *[to be described in the Scope of Work and Technical Criteria]*

Stage 2 means *[to be described in the Scope of Work and Technical Criteria]*

Stage 3 means *[to be described in the Scope of Work and Technical Criteria]*

Stage 4 means the balance of the [Project Works and the Temporary Works/Company's Works] not completed as part of Stage 1, Stage 2 or Stage 3.

[Note – To discuss staging requirements (if any) for the Project. See also note in clause 9.2]

Subcontract includes an agreement for supply of goods or services (including plant hire) or a consultant (including a designer) or any of them.

Subcontractor includes a subcontractor, a supplier of goods or services (including plant hire) or a consultant (including a designer) or any of them.

Subsidiary D&C Programs means the subsidiary programs referred to in clause 5.12(a).

Taxes means all income tax, stamp duty, and other taxes, levies, imposts, duties, deductions, charges and withholdings plus any interest, penalties, charges, fees or other amounts payable in respect thereof.

Temporary Areas means the land described as such in the Site Access Schedule.

Temporary Works means any temporary physical works performed for the purpose of carrying out the Company's Work, but which do not form part of the Project Works.

Term has the meaning given in the M5 Motorway Deed.

Traffic Management and Safety Plan means the Project Plan of that name referred to in Appendix ## to the Scope of Works and Technical Criteria, the initial one of which appears as Appendix ## to the Scope of Works and Technical Criteria.

Traffic Management Plan means the plan or plans of that name referred to in Appendix ## to the Scope of Works and Technical Criteria.

1.2 Definitions in the M5 West Widening Deed

Except as otherwise defined in clause 1.1, terms used in this Annexure A that are defined in the M5 West Widening Deed have the same meaning where used in this Annexure A.

1.3 Interpretation

In this Annexure A unless the context indicates a contrary intention:

- (a) a reference to a clause, ~~or Schedule~~ or exhibit is a reference to a clause of, or a Schedule or exhibit to, this Annexure A;
- (b) a reference to this Annexure A includes all schedules and exhibits to this Annexure A; and
- (c) a reference to a clause of the M5 West Widening Deed is a reference to a clause of the document to which this Annexure A is attached; and

(d) a reference to "fit for purpose", "fit for its intended purposes", "fit for their intended purposes" or "intended purpose" means the purpose or purposes as stated in, implied from, or contemplated by, this Annexure A or other parts of the M5 West Widening Deed.

2. LOCATION OF THE PROJECT WORKS

2.1 Access

Subject to any other provisions of the M5 West Widening Deed affecting access, RTA must give, or ensure that the Company, and its contractors and subcontractors have, sufficient access to the Project Site [and the Temporary Areas], by the dates set out in the Site Access Schedule to allow them to carry out the Company's Work (including the correction of Defects).

[RTA note: clause 2.1 is the subject of further review by RTA, including in light of the terms of the M5 lease]

2.2 Company accepts risk

Except as otherwise expressly provided in the M5 West Widening Deed, the Company agrees that the Company's use and occupation of the Project Site and the Temporary Areas from the date on which the Company is granted access by RTA in accordance with this clause 2 will at all times be at the risk of the Company.

2.3 Extra Land

- (a) The Company must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land in addition to the Project Site and the Temporary Areas which is necessary or which it may deem requisite or necessary for

the Company's Work including land required for the Local Road Works, the Property Works and the Service Works; and

- (ii) without limiting the Company's obligations under clause 15.3, provide to RTA:
 - (A) a properly executed release, which the Company must use its best endeavours to obtain, on terms satisfactory to RTA from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such land; or
 - (B) a statement signed by the Company to the effect that, despite the best endeavours of the Company, such owner or occupier has failed or refused to sign such a release.

(b) The Company acknowledges that:

- (i) integration of the requirements for access to Extra Land is at the sole risk of the Company; and
- (ii) RTA will not be liable upon any Claim (insofar as is permitted by law) by the Company arising out of or in any way in connection with:
 - (A) identifying and obtaining access to Extra Land; or
 - (B) any delay, additional costs or other effects on the Company's Work related to the ability of the Company or the Contractor to obtain access to Extra Land.

(c) The Company must ensure that:

- (i) the use; and
- (ii) the rehabilitation,

of Extra Land is to the satisfaction of the owner of the land, any lessee of the land, RTA and all relevant Authorities.

2.4 Access by RTA

Up to and including the Date of Final Completion, RTA's Representative and any person authorised by RTA will:

- (a) subject to ~~normal~~reasonable safety and security ~~constraints~~requirements, have the right of access during business hours or on reasonable notice (except in the case of an emergency, when the right of access will be immediate) to:
 - (i) the Project Site and the Temporary Areas; and
 - (ii) all other areas relevant to the Company's Work; and
- (b) be entitled to exercise this right of access for the purposes of:
 - (i) observing progress in the Company's Work and monitoring compliance by the Company of its obligations under the M5 West Widening Deed; and
 - (ii) exercising any right or performing any obligation which RTA has under any Project Document.

2.5 Site Access Schedule

The Company's rights in accordance with this clause 2 are subject to any restriction upon the access, possession and use of the Project Site or the Temporary Areas by the Company specified or referred to in the Site Access Schedule.

2.6 Access protocol

The Company's rights under this clause 2 in respect of any part or parts of the Project Site or the Temporary Areas commence upon the later of:

- (a) the date specified as the "Earliest Access Date" in the Site Access Schedule; and
- (b) the date which is 10 Business Days after the receipt by RTA of written notice from the Company that the Company is exercising its rights under this clause 2 in respect of such parts of the Project Site or the Temporary Areas (as applicable).

[RTA note: Interlink proposed inclusion of the words "and obligations" has not yet been included. Interlink to explain what specific obligations are to be covered, for consideration by RTA]

2.7 Termination of access

[Without limiting the M5 Motorway Deed/Lease], on the date of correction of all Defects in the Project Works in accordance with clause 11, the rights of the Company and its contractors, sub-contractors, servants, agents and workmen to have access to the Project Site and the Temporary Areas (or any relevant part or parts thereof) pursuant to clause 2 of this Annexure A will terminate.

[AAR Note: It may be necessary to capture other lease variation documents in this clause. Also, need to confirm how access for O&M will be granted]

[RTA note: above issue to be further considered]

2.8 Company acknowledgements

- (a) RTA does not warrant, guarantee, assume any duty of care or other responsibility for, or make any representation about, the accuracy, adequacy, suitability or completeness of the Information Documents.
- (b) The Company acknowledges that the Information Documents do not form part of the M5 West Widening Deed and that this clause 2.8 applies to Information Documents.
- (c) To the extent permitted by law, RTA will not be liable upon any Claim by the Company arising out of or in any way in connection with:
 - (i) the Information Documents; or
 - (ii) a failure by RTA to provide any information to the Company.
- (d) The Company:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information (including the Information Documents), data, representation, statement or document made, or provided to the Company, by RTA or anyone on behalf of RTA or any other information, data, representation, statement or document for which

RTA is responsible or may be responsible whether or not obtained from RTA or anyone on behalf of RTA; or

- (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into the M5 West Widening Deed;

[AAR Note: There may be specific Information Documents on which Interlink must be able to rely, in particular where there has not been time or access possible to conduct investigations. As such, Interlink would like to discuss a carve out for particular Information Documents].

[RTA note: not agreed. Information Documents should be for background information only and should not be relied upon by Interlink]

- (ii) warrants that it enters into the M5 West Widening Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that RTA has entered into the M5 West Widening Deed relying upon the warranties, acknowledgements and agreements in clauses 2.8(d)(i) and 2.8(d)(ii).
- (e) The Company releases and indemnifies RTA from and against:
- (i) any Claim against RTA by, or liability of RTA to, any person; or
- (ii) (without being limited by clause 2.8(e)(i)) any Loss suffered or incurred by RTA,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of, the information, data, representations, statements or documents referred to in clause 2.8(d)(i)(A) by the Company, the Contractor or any other person to whom that material is disclosed or made by the Company, the Contractor or any person on the Company's or the Contractor's behalf;
- (iv) any breach by the Company of this clause 2.8;
- (v) a failure by RTA to provide any information to the Company; or
- (vi) the Information Documents being relied upon or otherwise used by the Company, the Contractor or any other person to whom the Information Documents are disclosed by the Company, the Contractor or any person on the Company's or the Contractor's behalf in the preparation of any information or document, including any Information Document which is misleading or deceptive or false and misleading (within the meaning of those terms in sections 52 and 53 (respectively) of the *Trade Practices Act 1974* (Cth) or any equivalent provision of State or Territory legislation).

2.9 Physical conditions

- (a) The Company warrants that prior to the date of the M5 West Widening Deed it:
- (i) had sufficient opportunity to review and obtain, and obtained, all necessary legal, geotechnical and other technical advice in relation to the M5 West

Widening Deed, the Information Documents, the physical conditions and characteristics of the Project Site, Extra Land and the Temporary Areas and their surroundings and any other information that was made available in writing by RTA, or any other person on RTA's behalf, to the Company for the purposes of entering into the M5 West Widening Deed as well as the risks, contingencies and other circumstances having an effect on its entry into the M5 West Widening Deed, the cost of performing its obligations and its potential liabilities under the M5 West Widening Deed;

- (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its entry into the M5 West Widening Deed and its obligations under the M5 West Widening Deed;
 - (iii) ~~it~~ has made adequate allowance for the costs of complying with all the obligations under the M5 West Widening Deed and of all matters and things necessary for the due and proper performance and completion of the Company's Work;
 - (iv) informed itself of all matters relevant to the employment of labour at the Project Site and the Temporary Areas and all industrial matters relevant to the Project Site, the Temporary Areas and the Company's Work; and
 - (v) had sufficient access to the Project Site, Extra Land and Temporary Areas, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the M5 West Widening Deed and assume the obligations and potential risks and liabilities which it imposes on the Company.
- (b) Except as otherwise expressly provided in the M5 West Widening Deed, the Company is responsible for, and assumes the risk of all Loss or delay it suffers or incurs arising out of or in connection with, the physical conditions and characteristics of the Project Site, the Temporary Areas, any Extra Land, the Environment or their surroundings including:
- (i) the existence of any Contamination;
 - (ii) the suitability or otherwise of any material on the Project Site and the Temporary Areas for use in the Company's Work; and
 - (iii) water, atmospheric and sub-surface conditions or characteristics.

2.10 Condition of Project Site, Temporary Areas, Extra Land and existing structures

- (a) RTA makes no representations and gives no warranty to the Company in respect of:
 - (i) the condition of:
 - (A) the Project Site, the Temporary Areas or any Extra Land; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas or any Extra Land; or
 - (ii) the existence, location, condition or availability of Services in respect of the Project Site, the Temporary Areas or any Extra Land.

- (b) Except as otherwise expressly provided in the M5 West Widening Deed, the Company must accept:
- (i) the Project Site, the Temporary Areas and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Project Site, the Temporary Areas and any Extra Land,
- in their present condition and subject to all defects, including all sub-surface conditions.
- (c) Without limiting clause 6.3, the Company accepts all responsibility for the feasibility and fitness for purpose of the Concept Design including, in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the Project Site, the Temporary Areas and any Extra Land.

[AAR Note: Interlink is prepared to accept risk on additions to any existing structures necessitated as a result of the widening works. However, Interlink cannot accept risks for off-Concession structures, nor provide warranties in relation to the integrity of these structures, including additional costs arising out of the failure of these structures. Further drafting will need to be agreed between the Parties regarding a carve out for existing structures]

[RTA note: as a minimum, Interlink should warrant that it will not adversely affect the structural integrity of any existing structures (whether on or off the Project Site) as a result of the carrying out of the Company's Work. These issue are to be further discussed between the parties]

2.11 Artefacts

- (a) All Artefacts discovered on or under the surface of the Project Site, the Temporary Areas or the Extra Land will (as between RTA and the Company) be the absolute property of RTA.
- (b) The Company must:
- (i) at all times permit and allow RTA or any person authorised by RTA to watch or examine any excavations on the Project Site, the Temporary Areas or the Extra Land;
 - (ii) at its expense, take every precaution to prevent Artefacts being removed or damaged; and
 - (iii) immediately upon discovery of any Artefact notify RTA of such discovery and comply at its expense with any directions or orders imposed by any relevant Authority upon the Company or RTA in respect of such Artefact.

[RTA note: Interlink has sought the inclusion of new paragraphs (c), (d) and (e) covering, among other things, cost reimbursement to Interlink. Not agreed by RTA in light of the history of this project and Interlink's possession of the tollroad]

2.12 Native Title Application

- (a) If there is a Native Title Application with respect to the Project Site, the Temporary Areas, or any part thereof, the Company must continue to perform the Company's Work, unless otherwise:
- (i) directed by RTA;

- (ii) ordered by a court or tribunal; or
 - (iii) required by Law.
- (b) For the purposes of clause 2.12(a)(i), RTA may by written notice direct the Company to suspend any or all of the Company's Work until such time as RTA gives the Company further written notice.
- (c) If the Company (or ~~the~~ Contractor) is directed, ordered or required to cease to perform the Company's Work as referred to in clause 2.12(a) then:
 - (i) subject to clause 2.12(c)(ii)(C), RTA will pay the Company the reasonable costs and expenses directly incurred by:
 - (A) the Contractor (excluding any amounts payable by ~~the~~ Contractor to the Company, a Related Entity of the Company or a Related Entity of the Contractor, to the extent that the ~~Company-Contractor~~ or the Related Entity is not engaged on an arm's length basis and on commercial terms); and
 - (B) the Company (without double counting) (excluding any amounts payable by the Company to the Contractor or a Related Entity of ~~the~~ Contractor),arising directly as a result of such direction, order or requirement (including delay costs of the Company (including any reasonable interest and fees payable under the [Debt Financing Documents] during the period of the delay), to the extent only that such direction, order or requirement prevents the Company from achieving Final Completion by the Date for Final Completion); and

[RTA note: Interlink has sought amendments to paragraph (c)(i). Not all amendments agreed by RTA]
 - (ii) the Company must:
 - (A) take all reasonable steps to mitigate such costs and expenses;
 - (B) for this purpose, comply with all reasonable directions of RTA concerning the Native Title Application and the consequences thereof; and
 - (C) ensure that the Contractor complies with the requirements of this clause 2.12(c)(ii).
- (d) If the Company is prevented from carrying out the Company's Work for a period exceeding 6 months as a result of a direction, order or requirement as referred to in clause 2.12(a) then RTA may in its absolute discretion terminate the M5 West Widening Deed by giving a written notice to that effect to the Company after which the M5 West Widening Deed will be terminated and clause ## of the M5 West Widening Deed will apply.
- (e) For the purposes of clause 2.12(c)(i), reasonable costs and expenses includes a reasonable amount, which is agreed to be at [insert]%, for the Contractor's overhead and profit associated with the direction, order or requirement.

[RTA note: Interlink has sought the inclusion of a new paragraph (e). Interlink to consider RTA's compromise new paragraph (e) above]

(f) Clause 2.12(c)(i) does not apply in respect of any costs or expenses incurred by the Company (without double counting) or the Contractor to the extent such costs or expenses result from a failure by the Company to comply with clause 2.12(c)(ii).

(g) The Company's entitlement under clause 2.12(c)(i) will be its sole and exclusive right to payment of money arising out of, or in any way connection with, a Native Title Application referred to in clause 2.12(a).

2.13 Contamination

In addition to the requirements of the Environmental Documents and without limiting clauses 2.9 and 2.10, the Company bears the risk of all Contamination in, under or around the Project Site, the Temporary Areas or any Extra Land which:

- (a) exists at the date of the M5 West Widening Deed; or
- (b) otherwise occurs or arises on or after the date of the M5 West Widening Deed,

and the Company must:

- (c) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents;
- (d) remediate the Project Site, the Temporary Areas any Extra Land, to the extent it is in any way degraded by such Contamination; and
- (e) indemnify RTA from and against any Claim or Loss (including in respect of third party claims against RTA or its contractors) suffered or incurred by RTA arising out of or in any way in connection with such Contamination.

[RTA note: Interlink has sought to change the risk profile to this clause in a manner so that they are only responsible for contamination causes by the Company's Work and that they are otherwise entitled to an indemnity from RTA in certain circumstances. Not agreed by RTA in light of the history of this project and Interlink's possession of the tollroad]

2.14 Existing Operations of the M5 Motorway

Except to the extent expressly permitted by the M5 West Widening Deed and without ~~limiting~~ limiting any other obligations of the Company, the Company must:

- (a) continue the Existing Operations during the course of carrying out the Company's Work;
- (b) in carrying out the Company's Work, not disrupt, interrupt or interfere in any way with the free movement of traffic into and out of, adjacent to, around, on or about the Project Site or the M5 Motorway or block or impair access to any premises, roadways or other facilities (whether or not associated with the Existing Operations) and comply with RTA's reasonable directions in relation to them;

[RTA note: Interlink has sought certain changes to paragraphs (a) and (b), particularly:

- **inserting, at the end of paragraph (a), "except to the extent that the Company's inability to continue the Existing Operations was a direct and unavoidable result of carrying out and completing the Company's Work in accordance with the M5 West Widening Deed";**
and
- **including the word "materially" before the word "not" in line of paragraph (b).**

To be discussed between RTA and Interlink]

-
- (c) not cause any nuisance or inconvenience to the users of the M5 Motorway except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Company's Work in accordance with the M5 West Widening Deed;
 - (d) program and co-ordinate the Company's Work with the Existing Operations;
 - (e) ensure that, in carrying out the Company's Work, the M5 West Widening properly interfaces and integrates with, and connects to, the physical infrastructure of the M5 Motorway so as to enable the M5 West Widening, when completed, to fully comply with the requirements of the M5 Motorway Deed; and
 - (f) immediately:
 - (i) repair and make good any damage to the physical infrastructure of the M5 Motorway to the extent arising out of, or in connection with, the Company's Work; and
 - (ii) when directed by RTA, take such action as is required to ensure that its obligations in this clause 2.14 are complied with.

3. QUALITY

3.1 Quality system

- (a) The Company must implement a quality system for the management of all aspects of the Company's obligations under the M5 West Widening Deed and in accordance with the requirements of the Scope of Works and Technical Criteria and the Quality Plan.
- (b) The Company must:
 - (i) develop and implement a Quality Plan in accordance with the Scope of Works and Technical Criteria;
 - (ii) submit each revision of the Quality Plan to RTA's Representative and the Independent Verifier; and
 - (iii) not reduce the number of personnel, the minimum expertise of personnel or the scope of work or extent of surveillance included in the Quality Plan without the written approval of RTA's Representative.
- (c) The Company must provide to RTA and, where applicable, the Independent Verifier, the certificates required by the Certification Schedule.

3.2 Independent Verifier

- (a) The Independent Verifier must be engaged by the Parties at the Company's cost on the terms of the Deed of Appointment of Independent Verifier. The Independent Verifier's role is to:
 - (i) independently verify in accordance with the Deed of Appointment of Independent Verifier that the Project Works and the Temporary Works comply with the requirements of the M5 West Widening Deed; and
 - (ii) make determinations on matters that the M5 West Widening Deed expressly requires be determined by the Independent Verifier.
- (b) The Independent Verifier is obliged to act independently of the Company, RTA, the Contractor and any Subcontractors.

- (c) Any determination by the Independent Verifier in respect of a matter required by the M5 West Widening Deed to be determined by the Independent Verifier will be final and binding upon the Parties except in the case of manifest error.

RTA note: Interlink has sought the deletion of paragraph (c). Not agreed by RTA

- (d) The Company must provide the Independent Verifier with all information and documents and allow the Independent Verifier:

- (i) to attend design meetings; and
- (ii) access to such premises (subject to reasonable safety and security requirements),

all as may be necessary or reasonably required by the Independent Verifier to allow the Independent Verifier to perform its obligations under the Deed of Appointment of Independent Verifier.

- (e) Where contemplated in any certificate which the Independent Verifier is required to provide pursuant to the Certification Schedule, the Independent Verifier must in that certificate address any matters required by RTA.
- (f) Nothing that the Independent Verifier does or fails to do pursuant to the purported exercise of its functions and activities under the Deed of Appointment of Independent Verifier will entitle the Company to make any Claim against RTA.

3.3 Quality management and certification

- (a) RTA and the Company acknowledge that the finance, design and construct project delivery method chosen for the M5 West Widening:

- (i) requires the Company to assume responsibility for all aspects of the quality of the Company's Work and for the durability of the Project Works;
- (ii) allows the Independent Verifier under the Deed of Appointment of Independent Verifier to observe, monitor, audit and test all aspects of the quality of the Company's Work and the durability of the Project Works to ensure compliance with the requirements of the M5 West Widening Deed;
- (iii) requires the Independent Verifier under the Deed of Appointment of Independent Verifier, by reviewing and assessing the quality of the Company's Work and the durability of the Project Works, to verify the Company's compliance with the requirements of the M5 West Widening Deed; and
- (iv) allows RTA to monitor compliance of the Company's Work with the requirements of the M5 West Widening Deed.

- (b) The Company must ensure that a Quality Manager is engaged who must:

- (i) independently certify the effectiveness and integrity of the Company's quality system in achieving conformance with the requirements of the M5 West Widening Deed;
- (ii) report to RTA's Representative and the Independent Verifier on quality issues in accordance with the requirements of the M5 West Widening Deed; and

-
- (iii) have the requisite experience and ability described for the Quality Manager in Appendix ## to the Scope of Works and Technical Criteria.
 - (c) The ~~Contractor Company~~ must provide to RTA's Representative a certificate executed by the Quality Manager in the form of:
 - (i) Schedule 8 every 3 months from the date of the M5 West Widening Deed up to the Date of Final Completion;
 - (ii) Schedule 9 as a condition precedent to Construction Completion and as a condition precedent to Final Completion; and
 - (iii) Schedule 10 upon the expiry of the last Defects Correction Period.

3.4 Project quality non-conformance

- (a) The Company must comply with the procedure for non-conformances set out in the Scope of Works and Technical Criteria and the Quality Plan.
- (b) Corrective actions implemented under the Company's quality system must comply with the requirements of the M5 West Widening Deed including the Scope of Works and Technical Criteria.
- (c) The Company must promptly issue all documents relating to quality non-conformances to the Independent Verifier and RTA's Representative.

3.5 Monitoring and audits

The Company must:

- (a) have its compliance with the Quality Plan, Environmental Management Plans and Occupational Health, Safety and Rehabilitation Management Plan audited at intervals not exceeding 6 months during the Company's Work at its cost by an independent auditor who is acceptable to RTA's Representative;
- (b) permit representatives of RTA and the Independent Verifier to be present during such audits; and
- (c) deliver 2 copies of each audit report to RTA's Representative and the Independent Verifier within 5 Business Days of its completion.

3.6 No relief from obligations

The Company will not be relieved from any of its liabilities or responsibilities under the M5 West Widening Deed (including under clause 11 of this Annexure A) or otherwise according to Law nor will the rights of RTA whether under the M5 West Widening Deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation and compliance with any quality system or the Quality Plan; or
- (b) any failure by RTA, RTA's Representative, the Independent Verifier or any person acting on behalf of RTA or engaged by RTA to detect any Defect including where such failure is the result of a negligent act or omission.

4. PROJECT CONSENTS

4.1 Consents and Approvals

The Company must:

-
- (a) expeditiously apply for and obtain from each relevant Authority all Approvals (other than the Project Approval);
 - (b) comply with the lawful requirements of each such Authority to permit their proper consideration of the applications for such Approvals;
 - (c) comply with, carry out and fulfil, all conditions and requirements of all Approvals (including those which RTA is expressed under the terms of the Approval to be required to comply with, carry out and fulfil) other than to the extent specified in Part B of Schedule 5;
 - (d) pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority in respect of any Approval; and
 - (e) comply with the Law in carrying out the Company's Work.

4.2 Project Approval

- (a) Notwithstanding any review of any aspect of the design or construction of the Project Works or the Temporary Works by RTA or any other Authority, the Company warrants that the Concept Design and the Scope of Works and Technical Criteria ~~complies~~comply with the Project Approval.
- (b) Without limiting clause 4.2(c), clause 8.1 will apply as if RTA's Representative had given a Change Order if:
 - (i) the Project Approval is modified under the EP&A Act;
 - (ii) the Minister for Planning issues a new Approval in respect of the Project Works in substitution for or replacement of the Project Approval; or
 - (iii) any such new Approval is modified under the EP&A Act,

(other than as a result of a breach of the Project Approval by the Company or the Contractor or an application for modification or a new Approval by the Company or the Contractor) and such modification or new Approval requires a Change to the Project Works ~~or a change to the M5 West Widening~~ (but excluding any effect which such modification or new Approval has upon the Temporary Works or the process required to design and construct the Project Works).

[RTA note: Interlink Roads has sought the deletion of the word in brackets at the end of paragraph (b). To be further considered between the parties]

- (c) The Company must:
 - (i) take all reasonable steps to mitigate the cost of any Change to the Project Works or any change to the M5 West Widening referred to in clause 4.2(b);
 - (ii) for this purpose, comply with all reasonable directions of RTA's Representative concerning the Change to the Project Works or any change to the M5 West Widening referred to in clause 4.2(b), and its consequences; and
 - (iii) ensure that the Contractor and its Subcontractors comply with this clause 4.2(c),

and RTA's liability under clause 4.2(b) will be reduced to the extent that the Company fails to comply with these obligations.

4.3 Environmental assessment

- (a) If there is a legal challenge brought about by way of commencement of court proceedings in relation to the environmental assessment or determination in respect of the M5 West Widening under the EP&A Act (including a legal challenge to the Project Approval), the Company must continue to perform ~~its obligations under the M5 West Widening Deed~~ the Company's Work unless, as a result of that legal challenge, it or the Contractor is otherwise ordered by a court.
- (b) If the Company or the Contractor is ordered by a court to cease to perform ~~its obligations under the M5 West Widening Deed~~ the Company's Work (or to change the way it does so) as referred to in clause 4.3(a), then:
- (i) subject to clause ~~4.3(d)~~ 4.3(d) ~~4.3(e)~~, RTA must pay the Company the reasonable costs and expenses directly incurred by:
- (A) the Contractor (excluding any amounts payable by ~~a the~~ the Contractor to the Company, a Related Entity of the Company or a Related Entity of ~~the~~ the Contractor, to the extent that the ~~Company~~ Contractor or the Related Entity is not engaged on an arm's length basis and on commercial terms); and
- (B) the Company (without double-counting) (excluding any amounts payable by the Company to the Contractor, a Related Entity of the Company or a Related Entity of the Contractor),

arising directly as a result of a court order referred to in clause 4.3(a) (including delay costs of the Company (including any reasonable interest and fees payable under the [Debt Financing Documents] during the period of the delay), to the extent only that such court order prevents the Company from achieving Final Completion by the Date for Final Completion); and

[RTA note: Interlink has sought amendments to paragraph (c)(i). Not all amendments agreed by RTA]

- (ii) the Company must:
- (A) take all reasonable steps to mitigate such costs and expenses;
- (B) for this purpose, comply with all reasonable directions of RTA concerning the legal challenge and consequences thereof; and
- (C) ensure that the Contractor complies with the requirements of this clause 4.3(b)(ii).

(c) For the purposes of clause 4.3(b)(i), reasonable costs and expenses includes a reasonable amount, which is agreed to be at [insert]%, for the Contractor's overhead and profit associated with the direction, order or requirement.

[RTA note: Interlink has sought the inclusion of a new paragraph (c). Interlink to consider RTA's compromise new paragraph (c) above]

~~(e)~~ (d) Clause 4.3(b) does not apply:

- (i) in respect of any costs or expenses incurred by the Company (without double counting) or ~~the~~ the Contractor to the extent that such costs or expenses result from a failure by the Company to comply with its obligations under clause 4.3(b)(ii); or

- (ii) to the extent that the legal challenge is initiated or upheld, or the court order is made, due to the Company's non-compliance with its obligations under the M5 West Widening Deed.

~~(d)~~(e) The Company's entitlement under clause 4.3(b)(i) will be its **only sole and exclusive** right to payment of money arising out of or in any way in connection with a court order referred to in clause 4.3(a).

5. ADMINISTRATION

5.1 RTA's representatives

- (a) RTA:
 - (i) must appoint a person to be RTA's Representative **for** the purpose of the M5 West Widening Deed;
 - (ii) may at any time replace RTA's Representative, in which event RTA may appoint another person as ~~a representative~~ **RTA's Representative**; and
 - (iii) must give written notice of all appointments under clauses 5.1(a)(i) and 5.1(a)(ii) to the Company.
- (b) RTA's Representative may:
 - (i) by written notice to the Company appoint persons to exercise any of RTA's Representative's functions under the M5 West Widening Deed (each a **RTA Assistant Representative**) and the notice must specify:
 - (A) the functions which the RTA Assistant Representative may perform; and
 - (B) whether the RTA Assistant Representative can give any direction to the Company under the M5 West Widening Deed;
 - (ii) revoke or vary any appointment under clause 5.1(b)(i) by written notice to the Company; and
 - (iii) continue to exercise a function under the M5 West Widening Deed despite appointing one or more RTA Assistant Representatives to exercise the function under clause 5.1(b)(i), provided that only one person may exercise the same function in relation to the same issue at any one time.
- (c) RTA's Representative may:
 - (i) by written notice to the Company appoint one or a number of officers to perform the functions identified in clause 5.1(d) (each a **RTA Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 5.1(c)(i) by **written** notice ~~in writing~~ to the ~~Contractor~~ **Company**; and
 - (iii) continue to exercise a function under the M5 West Widening Deed despite appointing a RTA Surveillance Officer to exercise the function under clause 5.1(c)(i).
- (d) The functions of a RTA Surveillance Officer may be all, some or any of the following:
 - (i) monitoring the Company's Work, including:

- (A) product quality;
 - (B) quality management and verification;
 - (C) environmental management;
 - (D) occupational health, safety and rehabilitation;
 - (E) control of traffic; and
 - (F) community relations;
- (ii) monitoring the Independent Verifier's surveillance of the Company's Work; and
 - (iii) reporting the findings of its monitoring activities under clauses 5.1(d)(i) and 5.1(d)(ii) from time to time to RTA's Representative.
- (e) RTA and the Company acknowledge and agree that any person appointed by RTA as RTA's Representative or RTA's Assistant Representative acts at all times as the agent of RTA and is subject to the directions of RTA.
 - (f) Unless expressly provided otherwise in the M5 West Widening Deed, RTA's Representative and any RTA's Assistant Representative are not obliged to review, or comment upon, any documentation or information which the Company gives to RTA in respect of the Project.

5.2 Company's representatives

- (a) The Company must ensure that the Company's Representative acts as a representative of, and is authorised to act on behalf of, the Company in discharging its functions under the M5 West Widening Deed.
- (b) The Company may appoint more than one Company's Representative and, if it does so, the Company must provide written notice to RTA's Representative specifying the functions which each of the Company's Representatives ~~are~~is authorised to discharge. The Company may not appoint more than one Company's Representative to discharge the same function or functions under the M5 West Widening Deed.
- (c) The Company may by notice in writing to RTA's Representative, substitute a Company's Representative with another person.

5.3 Company's personnel

- (a) The Company must:
 - (i) provide experienced and skilled personnel to perform its obligations under the M5 West Widening Deed; and
 - (ii) ensure that its personnel (including those referred to in clause 5.3(b)) as a team carry out the Company's Work in a manner that is courteous and co-operative and recognises the interests and needs of the local community.
- (b) The Company must:
 - (i) ~~employ~~engage those personnel specified in Schedule 6 in the positions specified in Schedule 6;

- (ii) subject to clause 5.3(b)(iii), not replace the personnel referred to in clause 5.3(b)(i) without RTA's Representative's prior written approval (acting reasonably); and
- (iii) if any of the personnel referred to in clause 5.3(b)(i):
 - (A) die;
 - (B) become seriously ill; or
 - (C) resign from the employment of the Company (other than to accept other employment with the Company or any Related Body Corporate of the Company),

replace them with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 6) approved by RTA's Representative (acting reasonably).

- (c) The personnel referred to in clause 5.3(b) (including any replacements) must:
 - (i) carry out the functions specified for them in the M5 West Widening Deed; and
 - (ii) otherwise be available for consultation with RTA's Representative when RTA's Representative reasonably requires.
- (d) RTA's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Company to remove any person (including a person referred to in clause 5.3(b) and the Independent Verifier) from the Project Site, the Temporary Areas, the Extra Land and the Company's Work.

AAR Note: The Deed of Appointment of Independent Verifier should alone govern the termination of the Independent Verifier. For this reason we have deleted the words "and the Independent Verifier"

RTA note: see amendment made in paragraph (e). There may be circumstances where the Independent Verifier may be required for safety or other reasons to be temporarily removed

- (e) The Company must ensure that any person the subject of a direction under clause 5.3(d) (other than the Independent Verifier) is not again employed in the Company's Work or on the Project Site, the Temporary Areas or the Extra Land.

5.4 Environmental Manager

- (a) In accordance with clause 5.3(b), the Company must ensure that there is an Environmental Manager who performs the role referred to in Schedule 6.
- (b) The Company must provide to RTA's Representative a certificate executed by the Environmental Manager in the form of Schedule 7 every 3 months from the date of the M5 West Widening Deed until the Date of Final Completion.

5.5 Design development meetings

- (a) The Company must hold regular meetings of its design team including its designers and the Independent Verifier (and in any event at the stage when concept designs or design solutions and detailed design documentation of discrete design elements are complete).

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- (b) The Company must give reasonable notice to RTA's Representative of those meetings and of any other meetings at which design issues are to be discussed to enable RTA's Representative or its delegate to attend. RTA may request the Company to ensure the presence at the meeting of any relevant persons from any of the Contractor or any of its Subcontractors involved in the design of any part of the Project Works.
 - (c) The Company must give RTA's Representative:
 - (i) an agenda prepared in consultation with, or as directed by, RTA's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 72 hours after each meeting.

5.6 Project Site meetings

- (a) The Company must convene meetings on the Project Site at fortnightly intervals prior to the Date of Final Completion.
- (b) The meetings referred to in clause 5.6(a) must be attended by:
 - (i) RTA's Representative (or his or her delegate);
 - (ii) the Company's Representative (or his or her delegate); and
 - (iii) any other person (including the Contractor or any of its Subcontractors) required by RTA's Representative.
- (c) The Company must provide RTA's Representative with an agenda prepared in consultation with RTA's Representative for each meeting under clause 5.6(a) no less than 48 hours prior to each meeting.
- (d) The role of chairperson for meetings under clause 5.6(a) will be held by RTA's Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 5.6(a) must give all persons who attended the meeting (and may give any other person) minutes of the meeting within 48 hours after the meeting.
- (f) The purpose of the meetings under clause 5.6(a) includes the review of (at least) the matters set out in the reports referred to in clause 5.11.

5.7 Project Control Group

- (a) A Project Control Group must be established consisting of:
 - (i) RTA's Representative;
 - (ii) the Company's Representative;
 - (iii) 2 persons from each Party holding positions more senior to the persons referred to in clauses 5.7(a)(i) and 5.7(a)(ii); and
 - (iv) such other members as the Parties may from time to time agree.

The persons referred to in clauses 5.7(a)(i), ~~5.7(a)(iii)~~ 5.7(a)(ii) and 5.7(a)(iii) may appoint delegates to attend Project Control Group meetings in their absence and to otherwise discharge their responsibilities under this clause 5.7.

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- (b) The objectives of the Project Control Group will be to monitor and review the progress of the Project, including to:
 - (i) assist in the resolution of any special matters referred to the Project Control Group by a Party;
 - (ii) monitor the progress of the Company's Work; and
 - (iii) review all progress reports in accordance with the Company Documentation Schedule.
 - (c) The Project Control Group will meet monthly prior to the Date of Final Completion or at such other regular periodinterval as RTA and the Company agree in writing.
 - (d) RTA's Representative will convene and chair meetings of the Project Control Group and will take the minutes of all meetings and distribute the minutes to members of the Project Control Group.
 - (e) RTA:
 - (i) has the right to have representatives of any Authority attend any meeting of the Project Control Group as observers; and
 - (ii) may request the Company to procure the attendance of representatives of the Contractor or any of its Subcontractors at any meeting of the Project Control Group and the Company must comply with any such request.
 - (f) The Company has the right to have a representative of the Contractor attend any meeting of the Project Control Group as an observer.
 - (g) The Parties may agree to establish additional project management groups.

5.8 Project Review Group

The Project Review Group comprises:

- (a) RTA's Representative;
- (b) the Company's Representative;
- (c) the Project Manager;
- (d) the Design Manager;
- (e) the Construction Manager;
- (f) the Quality Manager;
- (g) the Environmental Manager;
- (h) the Community Relations Manager;
- (i) the Company's occupational health, safety and rehabilitation management representative; and
- (j) any other person RTA's Representative reasonably requires from time to time.

5.9 Project Review Group functions

Project Review Group functions include reviewing:

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- (a) the progress of the Project Works and the Temporary Works in relation to the Overall D&C Program and the Subsidiary D&C Programs and the performance of the Contractor and its Subcontractors prior to the Date of Final Completion;
 - (b) issues arising out of the quality of the Project Works or the Temporary Works;
 - (c) matters arising from the Design Documentation, including any proposed design changes;
 - (d) environmental issues; and
 - (e) safety issues.

5.10 Project Review Group meetings

- (a) The Project Review Group must meet:
 - (i) on a regular monthly basis prior to the Date of Final Completion or such other regular ~~period~~interval as RTA and the Company agree in writing; and
 - (ii) at other times prior to the expiry of the last Defects Correction Period which RTA's Representative or the Company's Representative reasonably requires.

RTA note: Interlink sought the inclusion of the words "Date of Final Completion". See RTA compromise wording in (a)(ii) above

- (b) The Company must provide RTA's Representative with an agenda prepared in consultation with RTA's Representative for each meeting of the Project Review Group no less than 48 hours prior to each meeting.
- (c) The role of chairperson for meetings of the Project Review Group will alternate between the Company's Representative and RTA's Representative with RTA's Representative to chair the first such meeting.
- (d) The chairperson of a meeting of the Project Review Group must give all members of the Project Review Group (and any other person nominated by RTA's Representative) minutes of the meeting within 48 hours after the meeting.

5.11 The Company's reporting obligations

The Company must provide reports to RTA and RTA's Representative as required by the Company Documentation Schedule.

5.12 Programming and Stages

- (a) Within 28 days of the Satisfaction Date, the Company must prepare and submit to the Independent Verifier and RTA's Representative subsidiary programs for all design and construction activities (including procurement of goods and materials) **(Subsidiary D&C Programs)**.
- (b) The Subsidiary D&C Programs must:
 - (i) be based upon the Overall D&C Program;
 - (ii) contain the details required by section ## of the Company Documentation Schedule; and
 - (iii) contain the details which RTA's Representative reasonably requires.

-
- (c) The Overall D&C Program and all Subsidiary D&C Programs must be:
- (i) reviewed and updated on a monthly basis to take into account changes to the Company's program for the Company's Work and delays which may have occurred; and
 - (ii) given to the Independent Verifier and RTA's Representative with the reports required by section ## of the Company Documentation Schedule in both hard copy form and ~~in an~~ electronic form approved by RTA.
- (d) Any review of, or comments upon, the Overall D&C Program, the Subsidiary D&C Programs or any other program by RTA will not:
- (i) relieve the Company from or alter its liabilities or obligations under the M5 West Widening Deed;
 - (ii) evidence or constitute a Change, an extension of time or a direction by RTA's Representative to accelerate, disrupt, prolong or vary any, or all, of the Company's Work; and
 - (iii) affect the time for performance of RTA's obligations under the M5 West Widening Deed, including ~~obliging~~ RTA to do anything earlier than is necessary to enable the Company to achieve Construction Completion of any Stage by the Date for Construction Completion of that Stage or Final Completion by the Date for Final Completion.
- (e) If the Company chooses to compress or otherwise accelerate progress of the Company's Work:
- (i) RTA will not be obliged to take any action to assist or enable the Company to achieve Construction Completion of any Stage before the Date for Construction Completion of that Stage or Final Completion before the Date for Final Completion; and
 - (ii) the time for the carrying out of RTA's obligations will not be affected.

5.13 Project Plans

- (a) The Company must prepare the Project Plans specified in Appendix ## to the Scope of Works and Technical Criteria.
- (b) Each Project Plan must:
 - (i) where an initial plan exists for the relevant Project Plan and is contained in Appendices ## of the Scope of Works and Technical Criteria, be based upon that initial plan; and
 - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 5.13 and section ## of the Scope of Works and Technical Criteria.
- (c) Each Project Plan must be initially submitted to the Independent Verifier and RTA's Representative within the time period specified in Appendix ## to the Scope of Works and Technical Criteria and contain the contents specified in Appendix ## of the Scope of Works and Technical Criteria for the initial submission.
- (d) The Company acknowledges and agrees that:
 - (i) an intended purpose of each Project Plan is for the Company to provide a detailed description of how the Company intends to carry out the

Company's Work in accordance with the requirements of the M5 West Widening Deed with respect to the subject matter of each Project Plan; and

RTA note: Interlink has sought that the word "an" be changed to "the" in line 1 of paragraph (d)(i). Not agreed by RTA – however, see inclusion of new clause 1.3(d) by way of compromise

- (ii) the Project Plans will require ongoing development, amendment and updating throughout the duration of the Company's Work to take into account:
 - (A) Changes;
 - (B) changes in Law;
 - (C) the commencement of new phases or stages of design and construction as shown in the Overall D&C Program and the Subsidiary D&C Programs;
 - (D) those events or circumstances:
 - (I) expressly identified in Appendix ## to the Scope of Works and Technical Criteria for each Project Plan; or
 - (II) specified in the Scope of Works and Technical Criteria; and
 - (E) any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which the Company carries out the Company's Work.

~~(e) RTA's Representative may:~~

~~(i) review any Project Plan submitted under this clause 5.13; and~~

~~(ii) if the Project Plan submitted does not comply with the M5 West Widening Deed, notify the Company of that within 15 Business Days of the submission of the Project Plan.~~

~~(f) If the Company receives a notice under clause 5.13(e)(ii) the Company must promptly submit an amended Project Plan to the Independent Verifier and RTA's Representative.~~

~~(g)(e)~~ RTA's Representative owes no duty to the Company to review any Project Plan submitted by the Company for errors, omissions or compliance with the M5 West Widening Deed.

~~(h)(f)~~ No review of, comments upon, or notice in respect of, any Project Plan or any other act or omission of RTA or RTA's Representative (including a request made under clause ~~5.13(h) 5.13(h) 5.13(j)~~) about any Project Plan will lessen or otherwise affect:

- (i) the Company's liabilities or responsibilities under the M5 West Widening Deed or otherwise according to Law; or
- (ii) RTA's rights against the Company, whether under the M5 West Widening Deed or otherwise according to Law.

~~(i)(g)~~ The Company:

- (i) warrants that each Project Plan will be fit for its intended purposes; and
- [RTA note: Interlink has sought that the word "as stated in clause 5.13(d)(i)" be included at the end of paragraph (i)(i). Not agreed by RTA – however, see inclusion of new clause 1.3(d) by way of compromise]**
- (ii) must continue to develop and promptly amend or update the Project Plans:
- (A) to take into account the circumstances and events referred to in clause 5.13(d)(ii) as those circumstances and events occur or come into existence;
- (B) to correct any defects in, or omissions from, the Project Plans; and
- (C) as otherwise specified in the Scope of Works and Technical Criteria, including Appendix ## to the Scope of Works and Technical Criteria,

and promptly submit each further Project Plan to the Independent Verifier and RTA's Representative as it is further developed, amended or updated.

~~(j)~~(h) If RTA's Representative reasonably believes that:

- (i) any Project Plan does not comply with the requirements of the M5 West Widening Deed; or
- (ii) the Company has not further developed, updated or amended any Project Plan in accordance with the requirements of clause ~~5.13(g)~~5.13(g)5.13(i),

RTA's Representative may by written notice request that the Company further develop, update or amend the Project Plan specifying:

- (iii) the reasons why such development, updating or amending is required; and
- (iv) the time within which such development, updating or amending must occur (which must be reasonable, having regard to the amount of work required),

and the Company must:

- (v) further develop, update or amend the Project Plan as requested by RTA's Representative; and
- (vi) submit the further developed, updated or amended Project Plan to the Independent Verifier and RTA's Representative within the time specified under clause ~~5.13(h)(iv)~~5.13(h)(iv)5.13(j)(iv).

~~(k)~~(i) The Company:

- (i) must comply with each Project Plan which has been submitted to RTA's Representative under this clause 5.13 and in respect of which RTA's Representative has not given a notice under clause ~~5.13(h)~~ 5.13(e); and
- (ii) agrees that compliance by it with any Project Plan will not in any way lessen or otherwise affect:
- (A) its liabilities or responsibilities under the M5 West Widening Deed or otherwise according to Law; or

(B) RTA's rights against it, whether under the M5 West Widening Deed or otherwise according to Law.

~~(i)~~ The Company must comply with the restrictions upon the carrying out of the Company's Work specified in Appendix ## to the Scope of Works and Technical Criteria.

~~(m)(k)~~ To the extent they are relevant to operation, maintenance, repair and reinstatement of the M5 West Widening, all Project Plans must be incorporated into the Maintenance Manual.

5.14 Services and supplies

(a) The Company:

- (i) must obtain and pay for any Services and all connections for all Services it needs to perform its obligations under the Project Documents;
- (ii) must investigate, protect, relocate, modify and provide for all Services necessary for it to comply with its obligations under the Project Documents;
- (iii) assumes the risk of the existence, location, condition and availability of Services;

[AAR Note: Interlink considers that the risk of latent conditions regarding Services is better borne by the RTA. As such, further amendment to this clause may be required.]

[RTA note: not agreed by RTA in light of the history of this project and Interlink's possession of the tollroad

- (iv) must procure the connection to the stormwater discharge points and their operation, maintenance and repair; and
- (v) must contract for, acquire or otherwise procure or provide the provision of all fuel and other materials required for the performance of its obligations under the M5 West Widening Deed.

(b) RTA will not be liable under the M5 West Widening Deed or otherwise in relation to any Services required for the M5 West Widening.

5.15 Environmental management

(a) Without limiting the Company's other obligations under the M5 West Widening Deed, the Company must carry out the Company's Work:

- (i) in an environmentally responsible manner so as to protect the Environment; and
- (ii) in accordance with the Environmental Documents, the Environmental Management Plans and all relevant Law.

(b) The Company must indemnify RTA from and against any Claim or Loss RTA suffers or incurs arising out of or in any way in connection with a failure by the Company to comply with any obligation under this clause 5.15.

(c) The Company must immediately notify RTA in writing of any breach or potential breach of, or non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents or any Law regarding the Environment in the carrying out of the Company's Work.

5.16 Environmental Management Representative

- (a) The Environmental Management Representative must be engaged by the Parties at the Company's cost on the terms of the Deed of Appointment of Environmental Management Representative.
- (b) The Environmental Management Representative's role is to perform and fulfil the function of the Environmental Management Representative or EMR as contemplated by the Project Approval and in accordance with the Deed of Appointment of Environmental Management Representative.
- (c) The Environmental Management Representative is obliged to act independently of the Company, RTA, the Contractor and any of their respective Subcontractors.
- (d) The Company must provide the Environmental Management Representative with all information and documents and allow the Environmental Management Representative:
 - (i) to attend meetings; and
 - (ii) access to such premises (subject to reasonable safety and security requirements),all as may be:
 - ~~(A)~~(iii) necessary or reasonably required by the Environmental Management Representative or RTA's Representative to allow the Environmental Management Representative to perform its obligations under the Deed of Appointment of Environmental Management Representative; or
 - ~~(B)~~(iv) requested by the Environmental Management Representative or directed by RTA's Representative.
- (e) Nothing that the Environmental Management Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of Environmental Management Representative will entitle the Company to make any Claim against RTA.

5.17 Minimise disruption and complaints

- (a) The Company must in carrying out the Company's Work:
 - (i) take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles;
 - (iii) without limiting the Company's obligation to comply with all Law in all respects:
 - (A) prevent nuisance except to the extent that nuisance is the inevitable and unavoidable consequence of performing the Company's Work in accordance with the requirements of the M5 West Widening Deed including under clause 5.17(a)(iv); and
 - (B) minimise noise and disturbance to those affected by the Company's Work; and
 - (iv) ensure that in designing and constructing the Project Works it takes all steps that a prudent and reasonable owner of infrastructure would at that time have taken to prevent nuisance in accordance with clause 5.17(a)(iii).

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- (b) Subject to clause 5.17(a), the Company is responsible for the method and manner of carrying out the Company's Work and for all acts or omissions of the Company, the Contractor, or any of their respective employees or Subcontractors or anyone for which they are responsible in the course of carrying out the Company's Work.
- (c) The Company must immediately notify RTA's Representative in writing if any:
- (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
- by anyone (including any Authority other than RTA) or any landowner, lessee or licensee near the Project Site, the Temporary Areas or any Extra Land, against the Company, the Contractor or their respective employees or Subcontractors that could materially impact on the carrying out of the Company's Work, including:
- (iv) Contamination arising out of, or in any way in connection with, the Company's Work;
 - (v) the Company's non-compliance with any Environmental Document (or condition or requirement thereunder) or any Law regarding the Environment;
 - (vi) the Company's use or occupation of the Project Site, the Temporary Areas or any Extra Land; or
 - (vii) loss or damage ~~ef~~ relating to real or personal property.
- (d) The Company must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 5.17(c);
 - (ii) take all measures to seek to resolve those matters as soon as possible; and
 - (iii) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 5.17(c), which:
 - (A) contains full details of:
 - (I) each complaint, proceedings, letter of demand, order and direction; and
 - (II) the action taken by the Company with respect to each complaint, proceedings, letter of demand, order and direction;
 - (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - (C) may be inspected by RTA's Representative whenever RTA's Representative reasonably requires.

5.18 Security measures

The Company must provide such security measures as are necessary for the protection and security of the Project Works, the Temporary Works and the M5 West Widening against theft, vandalism, unauthorised entry into the Project Site, the Temporary Areas and any other unlawful acts.

RTA note: Interlink's proposed changes to clause 5.18 to restrict the obligation "until Construction Completion of a Stage" are not agreed by RTA as Interlink is the concessionaire for the entire project

5.19 Occupational health, safety and rehabilitation

RTA note: Interlink has sought that the Contractor, rather than Interlink, be the principal contractor. Not agreed by RTA

- (a) To the extent that RTA owns any place of work on which construction work which forms part of the Company's Work is to be undertaken, or RTA is otherwise able to validly appoint the Company as principal contractor under clause 210 of the OH&S Regulation, RTA:
- (i) appoints the Company as the principal contractor under clause 210 of the OH&S Regulation in respect of all such construction work, and the Company accepts such appointment; and
 - (ii) gives all necessary authority to the Company to enable the Company to discharge the responsibilities imposed on the principal contractor under the OH&S Regulation.
- (b) The Company must exercise and fulfil the functions and obligations of the principal contractor under clause 210 of the OH&S Regulation in respect of the appointment referred to in clause 5.19(a).
- (c) Where RTA:
- (i) does not own the place of work at which construction work which forms part of the Company's Work is to be undertaken; or
 - (ii) is not otherwise able to validly appoint the Company as principal contractor under clause 210 of the OH&S Regulation,
- the Company must exercise and fulfil the functions and obligations of the principal contractor under the OH&S Regulation as if the Company had been validly appointed as the principal contractor under clause 210 of the OH&S Regulation.
- (e)(d) Without limiting the Company's obligations as the principal contractor, the Company must:
- (i) have a Corporate OHS&R Management System which is in accordance with the New South Wales Government Occupational Health, Safety and Rehabilitation Management Systems Guidelines, third edition, dated November 1998;
 - (ii) at all times comply with its Occupational Health, Safety and Rehabilitation Management Plan;
 - (iii) carry out the Company's Work in a safe manner and so that no damage is caused to any person or property; and

- (iv) identify any land or improvements which may be affected by the Company's Work.

~~(d)~~(e) In this clause 5.19:

- (i) **OH&S Regulation** means the Occupational Health and Safety Regulation 2001 (NSW); and
- (ii) **principal contractor** and **construction work** have the same meanings assigned to those terms in the OH&S Regulation.

5.20 Australian goods, services and materials

The Company must comply with section ## of the Scope of Works and Technical Criteria.

5.21 Training

The Company must ensure that the Contractor complies with the NSW Government Training Management Guidelines and the requirements of section ## of the Scope of Works and Technical Criteria.

5.22 Employee relations

The Company must:

- (a) assume sole responsibility for, and manage all aspects of industrial relations in relation to, the ~~M5 West Widening~~Company's Work;
- (b) comply with the NSW Government Industrial Relations Management Guidelines dated December 1999;
- (c) comply with the Construction Plan, the NSW Government Code of Practice for Procurement and the Industry Guidelines for the Workplace Relations, in respect of industrial relations;
- (d) keep RTA's Representative fully and promptly informed of any industrial relations problems or issues which affect or are likely to affect the carrying out of the Company's Work; and
- (e) develop and implement the Project Industrial Relations Plan in accordance with clause 5.25.

5.23 Community liaison

The Company:

- (a) acknowledges that the areas where the Project Works and the Temporary Works are to be carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations programs and activities as:
 - (i) required by the Scope of Works and Technical Criteria;
 - (ii) contained in the Community Involvement Plan; and
 - (iii) reasonably requested by RTA from time to time.

5.24 M7 Motorway and M5 East Freeway interface

- (a) The Company must, in carrying out the Project Works and the Temporary Works, comply with all conditions and requirements set out in Appendix ## to the Scope of Works and Technical Criteria.
- (b) The Company must, in carrying out the Company's Work, ensure that ~~that~~ none of the ~~following~~ connections of the M5 Motorway to either of the M7 Motorway or the M5 East Freeway are closed or materially reduced at any time except to the extent permitted under (as applicable):
 - (i) ~~Action: this clause 5.24 is still to be developed~~ Appendix ## to the Scope of Works and Technical Criteria; or
 - (ii) the M5/M7 Interface Deed.

5.25 Project Industrial Relations Plan

- (a) Prior to commencing any Project Works or Temporary Works on the Project Site or the Temporary Areas, the Company must submit to RTA's Representative a Project Industrial Relations Plan.
- (b) The Project Industrial Relations Plan must:
 - (i) meet the requirements of the Scope of Works and Technical Criteria;
 - (ii) contain a signed declaration on the Company's letterhead verifying compliance in the preceding 12 months with all relevant employment and legal obligations, including those relating to:
 - (A) payment of remuneration to employees;
 - (B) annual leave;
 - (C) Long Service Payment Scheme registration;
 - (D) worker's compensation insurance;
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payment;
 - (iii) identify the location of time and wage records or other documents required to verify compliance with the obligations referred to in clause 5.25(b)(ii); and
 - (iv) identify the Federal or State awards that are likely to cover the Contractor and its Subcontractors in the carrying out of the Company's Work.

5.26 Project Industrial Relations Plan implementation review

- (a) The Company must ~~(each month)~~ submit the Project Industrial Relations Plan to RTA's Representative for review.
- (b) RTA's Representative must inform the Company of the outcome of each review conducted under this clause 5.26 and any corrective action which RTA considers necessary.
- (c) For the purposes of a review under this clause 5.26 the Company must:

- (i) make available to RTA's Representative, upon request, all industrial relations management records held or obtainable by the Company which are relevant to the review, including those relevant to the Contractor and its Subcontractors; and
- (ii) provide all assistance necessary to RTA's Representative during the review process, including:
 - (A) attending reviews; and
 - (B) promptly implementing any corrective action deemed necessary by RTA's Representative.

5.27 Notices of Claims

- (a) Subject to clause 8.3, RTA will not be liable upon any Claim by the Company arising out of or in any way in connection with any act or omission of RTA or any other fact, matter or thing under, arising out of or in any way in connection with the the Project, the Company's Work, the M5 West Widening Deed, Project Works or the Temporary Works unless the Company gives RTA's Representative the following notices:
 - (i) a written notice within the earlier of:
 - (A) 15 Business Days of when the Company first became aware of, or ought reasonably to have been aware of, the act, omission or other fact, matter or thing upon which the Claim is based; or
 - (B) 2 months of the first occurrence of the act, omission or other fact, matter or thing upon which the Claim is based,

RTA note: Interlink has sought changes to paragraphs (A) and (B) above. Not agreed by RTA as proposed wording is circular and uncertain

expressly specifying:

 - (C) that the Company proposes to make a Claim; and
 - (D) the act, omission, fact, matter or thing upon which the Claim will be based; and
 - (ii) a written Claim within 20 Business Days of giving the written notice under clause 5.27(a)(i), which must include:
 - (A) detailed particulars concerning the act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of the M5 West Widening Deed or otherwise, and if based on a term of the M5 West Widening Deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated.
- (b) If the act, omission, fact, matter or thing upon which the Claim is based is, or the consequences of the act, omission, fact, matter or thing are, continuing, the Company must continue to give the information required by clause 5.27(a)(ii) every

20 Business Days after the written Claim under clause 5.27(a)(ii) was submitted or given to RTA, until after the act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

- (c) This clause 5.27 will not apply to clause ## of the M5 West Widening Deed, or any Claim where the procedures for notifying or making that Claim are dealt with expressly in another provision of the M5 West Widening Deed.

6. DESIGN AND DESIGN DOCUMENTATION

6.1 The Company's design obligations

- (a) The Company warrants that:
- (i) the Company has checked and carefully considered the Scope of Works and Technical Criteria and Environmental Documents and that:
- (A) the Concept Design has been prepared by the Company and will be fit for its intended purposes;
- (B) it ~~has satisfied itself that there are no~~ bears the risk of any ambiguities or inconsistencies in or between the Concept Design, the Scope of Works and Technical Criteria and the Environmental Documents;
- (C) it has satisfied itself that the Scope of Works and Technical Criteria ~~it~~ is proper, adequate and fit for its intended purposes including for the purpose of enabling the Company to carry out the Company's Work in accordance with the M5 West Widening Deed including so as to satisfy the other requirements of this clause 6.1; and
- (D) it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Company's Work and with assuming the obligations and potential liabilities imposed on it under the M5 West Widening Deed;
- (ii) the Design Documentation will:
- (A) satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the M5 West Widening Deed; and
- (B) be, and will at all relevant times remain, fit for its intended purposes; and
- RTA note: Interlink has sought the deletion of the words "and will at all relevant times remain". Not agreed by RTA.**
- (C) be completed in accordance with the requirements of the M5 West Widening Deed;
- (iii) construction in accordance with the Design Documentation which the Company is entitled to use for construction purposes in accordance with clause 6.2(d) will satisfy the requirements of the Scope of Works and Technical Criteria and the other requirements of the M5 West Widening Deed; and
- (iv) the Project Works will:

- (A) be completed in accordance with, and satisfy the requirements of, the M5 West Widening Deed;
- (B) upon Final Completion, be, and will at all relevant times remain, fit for their intended purposes; and
- (C) be carried out so that the M5 Motorway remains at all times fit for its intended purposes.

[RTA note: Interlink has sought the deletion of the words "and will at all relevant times remain" in paragraph (B) as well as the deletion of paragraph (C) . Not agreed by RTA.]

- (b) The Company agrees that its obligations under, and the warranties given in, this clause 6.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Project Works and the Temporary Works notwithstanding:
 - (i) any design work carried out by others prior to the date of the M5 West Widening Deed and incorporated in the M5 West Widening Deed; or
 - (ii) subject to clause 8.1, any Change the subject of a direction by RTA's Representative.

6.2 Preparation of Design Documentation

- (a) The Company must give the Independent Verifier and RTA's Representative, throughout the preparation of the Design Documentation, the opportunity to comment on and monitor the development of Design Documentation by the Company in accordance with this clause 6.2 and the Company Documentation Schedule.
- (b) The Company must develop and complete all Design Documentation in accordance with the M5 West Widening Deed including the Company Documentation Schedule.
- (c) The Design Documentation for each discrete design element of the Project Works and the Temporary Works must be certified by the Company and verified by the Independent Verifier as:
 - (i) being appropriate for construction; and
 - (ii) complying with the M5 West Widening Deed including the Scope of Works and Technical Criteria and, in particular, the durability requirements in section ## and the design life requirements of section ## of the Scope of Works and Technical Criteria,in accordance with the Company Documentation Schedule.
- (d) Unless otherwise agreed in writing by RTA's Representative, the Company must construct the Project Works and the Temporary Works using Design Documentation which has been:
 - (i) certified by the Company;
 - (ii) submitted to RTA's Representative in a manner and at a rate which will give RTA's Representative a reasonable opportunity to review and, if he or she so wishes, for the opportunity to make comments within 15 Business Days of receipt of such Design Documentation; and

- (iii) verified by the Independent Verifier, with any comments by RTA's Representative provided in the period contemplated by ~~the Company Documentation Schedule paragraph (d)(ii)~~ addressed by the Independent Verifier as part of the verification,

in accordance with the Company Documentation Schedule.

- (e) Without limiting clause ## of the M5 West Widening Deed, RTA and the Company acknowledge and agree that:
 - (i) the receipt or review of, or any consultation or comments regarding, any Design Documentation by RTA or RTA's Representative is solely for the purpose of monitoring the performance of the Company;
 - (ii) RTA and RTA's Representative owe no duty to the Company to review the Design Documentation for errors, omissions or compliance with the requirements of the M5 West Widening Deed or to consult with the Company or make any comments regarding any Design Documentation; and
 - (iii) neither any review, consultation or comments by RTA or RTA's Representative, nor any failure to review, consult or comment by RTA or RTA's Representative, regarding any Design Documentation or any other act or omission by RTA or RTA's Representative in respect of any Design Documentation will lessen or otherwise affect:
 - (A) the Company's warranties under clause 6.1 or any of its other liabilities or responsibilities under the M5 West Widening Deed or otherwise according to Law; or
 - (B) RTA's rights against the Company whether under the M5 West Widening Deed or otherwise according to Law.

6.3 Concept Design

- (a) The Company acknowledges that prior to the date of the M5 West Widening Deed it procured the preparation of the Concept Design. The Company agrees that it bears absolutely all risks (except as otherwise expressly provided in the M5 West Widening Deed) howsoever they may arise as a result of the use by the Company of, or the reliance by the Company upon, the Concept Design in performing the Company's Work and that such use and reliance will not affect any of its obligations under the M5 West Widening Deed.
- (b) Without in any way limiting this clause 6, and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Company may have made in relation to any of the matters set out in clauses 6.3(a) and 6.3(b), except as otherwise expressly provided in the M5 West Widening Deed, the Company is responsible for, and assumes the risk of all increased costs and any Loss or delay it suffers or incurs arising out of or in connection with:
 - (i) the design and construction of the Project Works **and the Temporary Works** generally in accordance with the Concept Design costing more or taking longer than anticipated; and
 - (ii) any differences between the Project Works **and the Temporary Works** which the Company is required to design or construct (ignoring for this purpose any differences which are the subject of a Change Order issued under clause 8.1) and the Concept Design including:

- (A) differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Project Site, the Temporary Areas, any Extra Land, the Environment or their surroundings; and
- (B) differences required to ensure that the Project Works **and the Temporary Works** will be, and at all relevant times remain, fit for their intended purposes and satisfy the requirements of the M5 West Widening Deed, and to ensure that the M5 Motorway will remain fit for its intended purposes.

[RTA note: Interlink has sought the deletion of the words "and to ensure that the M5 Motorway will remain fit for its intended purposes". Not agreed by RTA.]

(c) The Company warrants to RTA that:

~~(i) the Concept Design has been procured by the Company;~~

~~(ii)(i) the Concept Design has been procured by the Company and~~ it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of the M5 West Widening Deed despite the Concept Design;

~~(iii)(ii)~~ if the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design, the Project Works and the Temporary Works will satisfy the requirements of the M5 West Widening Deed but nothing in this clause ~~6.3(c)(i)6.3(c)(i)6.3(c)(ii)~~ affects or limits clause 6.3(a), which will prevail to the extent of any inconsistency; and

~~(iv)(iii)~~ it will carry out and complete the Company's Work in accordance with the Concept Design but nothing in this clause ~~6.3(c)(iii)6.3(c)(iii)6.3(c)(iv)~~ affects or limits clause 6.3(a), which will prevail to the extent of any inconsistency.

(d) Without limiting the other provisions of this clause 6.3, the Company must not make any adjustment to the Concept Design which will reduce the:

- (i) durability;
- (ii) aesthetics and visible features;
- (iii) whole of life performance;
- (iv) user benefits; or
- (v) functional performance,

of any part of the Project Works or increase the user or maintenance costs of the Project Works.

6.4 Delivery up of Design Documentation

If the M5 West Widening Deed is terminated **by RTA for any reason**, the Company must immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not) then in existence to RTA.

7. CONSTRUCTION

7.1 Construction

- (a) The Company must ensure that the Project Works and the Temporary Works are, and warrants to RTA that the Project Works and the Temporary Works will be, constructed:
- (i) in accordance with the requirements of the M5 West Widening Deed including:
 - (A) the Scope of Works and Technical Criteria;
 - (B) any relevant Design Documentation which has been:
 - (I) certified by the Company;
 - (II) submitted to RTA's Representative for the opportunity ~~for RTA's Representative~~ to make comments; and
 - (III) verified by the Independent Verifier, ~~and which verification addresses any comments made by RTA's Representative,~~in accordance with clause 6.2(d); and
 - (C) any Change directed by RTA's Representative in accordance with clause 8.1(a) or 8.1(d) or 8.2(d);
 - (ii) with good workmanship and materials which are:
 - (A) new (or, with RTA's prior written consent, reused) and free of Defects or other imperfections; and
 - (B) of the quality specified in the Scope of Works and Technical Criteria;
 - (iii) so that they are, and will at all relevant times be, fit for their intended purposes;
 - (iv) so that the M5 Motorway will at all times remain fit for its intended purposes; and
 - (v) in accordance with Law.
- RTA note: Interlink has sought the deletion of the words "and will at all relevant times be" as well as the deletion of paragraph (iv). Not agreed by RTA.**
- (b) If there is any ambiguity, discrepancy or inconsistency between the M5 West Widening Deed and any Design Documentation, then unless otherwise directed by RTA's Representative, the requirements of the M5 West Widening Deed will prevail.

7.2 RTA's right to inspect

- (a) RTA and RTA's Representative may at any time, subject to reasonable safety and security requirements, inspect the Project Works and any Temporary Works or the progress of the Company's Work.
- (b) Neither RTA nor RTA's Representative owes any duty to the Company to:
- (i) inspect the Project Works or the Temporary Works; or

- (ii) review any construction for errors, omissions or compliance with the requirements of the M5 West Widening Deed if it does so inspect.
- (c) No inspection of the Project Works or the Temporary Works or review of any part of the Company's Work by RTA, RTA's Representative or the Independent Verifier will in any way lessen or otherwise affect:
 - (i) the Company's obligations under the M5 West Widening Deed (including its warranties under clause 7.1(a)) or otherwise according to Law; or
 - (ii) RTA's rights against the Company whether under the M5 West Widening Deed or otherwise according to Law.

7.3 Review of construction

- (a) RTA's Representative may (but is not obliged to) monitor the Company's Work in order to form an opinion as to whether the construction obligations of the Company are being complied with and, in particular, whether the Project Works or the Temporary Works are being constructed in accordance with the requirements of the M5 West Widening Deed.
- (b) If RTA's Representative believes that the Project Works or Temporary Works are not being constructed in accordance with the requirements of the M5 West Widening Deed, RTA's Representative may give written notice to the Company specifying the Defect.
- (c) If the Company disagrees with any notice given by RTA's Representative pursuant to clause 7.3(b), it must within 5 Business Days of receipt of such a notice give written notice of its disagreement to RTA's Representative. RTA's Representative and the Company must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 5 Business Days thereafter of receipt of the notice of disagreement, either Party may by written notice to the other and the Independent Verifier refer the matter for determination in accordance with clause 11## of the M5 West Widening Deed.
- (d) If RTA's Representative gives a notice under clause 7.3(b) and the Company does not give a notice under clause 7.3(c) (or if the Company does give a notice under clause 7.3(c) and the Independent Verifier determines that the Project Works or Temporary Works are not being constructed in accordance with the requirements of the M5 West Widening Deed), the Company must correct the Defect the subject of the notice under clause 7.3(b) within a reasonable period and, in any event, prior to Construction Completion.

7.4 Traffic Management and Temporary Road Closures

- (a) If the Company reasonably considers that it must, or is likely to, interfere with the traffic flow on existing roadways (other than the M5 Motorway) including Local Roads and completed parts of the Project Works in order to perform any Company's Work, it must:
 - (i) give ~~the~~ RTA details of the arrangements it proposes;
 - (ii) obtain ~~the~~ RTA's approval in respect of those arrangements;
 - (iii) give the public sufficient notice of those arrangements;
 - (iv) lodge with RTA's Representative any Traffic Management Plan required by section [insert] of the Scope of Works and Technical Criteria; and

-
- (v) (in the case of arrangements which will, or are likely to, affect Local Roads) lodge with RTA an application for a Road Occupancy Licence, that meets the requirements of Appendix ## ~~of~~to the Scope of Works and Technical Criteria.
- (b) A Traffic Management Plan under clause 7.4(a)(iv) must be lodged as early as possible prior to the date when the Company intends to undertake any discrete part of the Company's Work (and in any event no less than 10 Business Days prior to that date), so as to allow RTA's Representative to review the Traffic Management Plan and, where appropriate, approve the Traffic Management Plan.
- (c) An application for a Road Occupancy Licence under clause 7.4(a)(v) must be lodged as early as possible prior to the date the Company intends to undertake the relevant Company's Work (and in any event no less than 20 Business Days prior to that date), so as to allow RTA to review the application and, where appropriate, approve the Road Occupancy Licence.
- (d) The Company must not undertake any Company's Work which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any Local Road:
- (i) without a Road Occupancy Licence issued by RTA in accordance with the requirements of Appendix ## ~~of~~to the Scope of Works and Technical Requirements;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of athe Road Occupancy Licence,
- and a breach of the Road Occupancy Licence will constitute a breach of the M5 West Widening Deed.
- (e) Subject to clauses 7.4(a) to 7.4(d) inclusive, the Company:
- (i) is responsible for the control, direction and protection of all traffic in any way affected by the Company's Work;
 - (ii) must during the Company's Work manage all such traffic to ensure:
 - (A) its continuous, safe and efficient movement;
 - (B) the traffic carrying capacity of Local Roads and any completed and opened sections of the Project Works is maintained in accordance with the Traffic Management Plan and the requirements of the Scope of Work and Technical Criteria in respect of traffic management and safety; and
 - (C) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
 - (iii) must at all times comply with the Traffic Management and Safety Plan, each Traffic Management Plan, each Road Occupancy Licence and the requirements of the Scope of Works and Technical Criteria in respect of traffic management and safety; and
 - (iv) must comply with the directions of any relevant Authority and RTA's Representative with respect to such management.

7.5 Traffic instructions from New South Wales Police Service

Notwithstanding any other provision of the M5 West Widening Deed, the Company:

- (a) must not restrict, close, interfere with or obstruct the free flow of traffic on any existing roadways (other than the M5 Motorway) including completed parts of the Project Works or Local Roads contrary to the instructions of the New South Wales Police Service; and
- (b) in restricting, closing, interfering with or obstructing the free flow of traffic on any existing roadways including completed part of the Project Works or Local Roads, must act in accordance with any instructions of the New South Wales Police Service including to cease any of the Company's Work and to re-open the lane or shoulder.

[RTA note: Interlink has sought the inclusion of new paragraphs (c) and (d) covering cost reimbursement to Interlink. Not agreed by RTA]

7.6 Traffic instructions from RTA's Representative's and Authorities

Notwithstanding any Road Occupancy Licence issued by RTA during the period of the carrying out of the Company's Work, for any lane or shoulder closure, RTA's Representative or any relevant Authority (including ~~the~~ RTA) may at any time direct the Company to temporarily cease any Company's Work and to re-open the lane or shoulder (which, other than in an emergency, will be given with reasonable notice having regard to the circumstances).

[RTA note: Interlink has sought the inclusion of new paragraphs (b) and (c) covering cost reimbursement to Interlink. Not agreed by RTA]

7.7 Notice of accidents

Where the Company becomes aware before the Date for Final Completion of any accidents involving damage to persons or property occurring upon or in the vicinity of the Project Site, the Temporary Areas or any Extra Land, the Company must:

- (a) promptly give RTA's Representative a detailed written report of the accident as required by section ## of the Scope of Works and Technical Criteria; and
- (b) otherwise comply with Law and the Occupational Health, Safety and Rehabilitation Management Plan.

7.8 Subcontracting

- (a) The engagement by the Company of the Contractor to perform some or all of the obligations of the Company under the M5 West Widening Deed will not limit or otherwise affect the Company's obligations or ~~liability~~ liabilities under the M5 West Widening Deed.
- (b) The Company will be liable to RTA for the acts and omissions of the Contractor, its Subcontractors and their respective employees and agents as if such acts or omissions were the acts or omissions of the Company.
- (c) The Company must notify RTA's Representative of, ~~and~~ if RTA's Representative requires, give RTA's Representative:
 - (i) access to, ~~any~~ any proposed or executed contract in respect of the Company's Work with a contract sum of more than \$500,000 (including all plans, specifications and drawings relating to that contract); and

- (ii) a copy of, any proposed or executed contract in respect of the Company's Work with a contract sum of more than \$20,000,000 (including all plans, specifications and drawings related to that contract).
- (d) The Company must ensure that the Contractor:
 - (i) is at all times pre-qualified or registered to the appropriate level under RTA's pre-qualification and registration procedures; and
 - (ii) does not enter into any Subcontract in respect of the categories of work set out in Schedule 4 (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under RTA's pre-qualification and registration procedures.
- (e) The Company must ensure that:
 - (i) its contract with the Contractor includes a clause; and
 - (ii) the Contractor includes a clause in each Subcontract entered into by the Contractor with any Subcontractor,

which provides that if the M5 West Widening Deed is terminated under clause 2.12(d) or clause ## of the M5 West Widening Deed, then:

- (iii) ~~then~~, if required by RTA to do so, the Contractor or the Subcontractor (as the case may be) must consent to a novation of the relevant contract to ~~the~~ RTA; or
- (iv) if RTA does not elect to novate the relevant contract, the Company or the Contractor (as the case may be) may terminate the relevant contract and the Company or the Contractor (as the case may be) will pay to the Contractor or the Subcontractor (as the case may be) an early termination amount equal to the amount determined by the Independent Verifier as being:
 - (A) the aggregate of:
 - (I) the contract value of the work properly executed in accordance with the relevant contract;
 - (II) reasonable costs and expenses properly incurred in expectation of completing the work under the relevant contract;
 - (III) liabilities to third parties (excluding any Related Entity or Related Body Corporate) for early termination; and
 - (IV) 2% of the unpaid balance of the relevant contract sum on account of profit foregone, less

RTA note: Interlink has sought that "2%" be changed to "6%". Not agreed by RTA

- (B) the total amounts paid on account of the relevant contract sum.

7.9 Property Works

- (a) The Company must:
 - (i) carry out the Property Works with respect to each Parcel:

- (A) in accordance with the Scope of Works and Technical Criteria;
- (B) so that they are fit for their intended purposes; and
- (C) so that the M5 Motorway will remain at all times fit for its intended purposes;

[RTA note: Interlink has sought the deletion of paragraph (C) above. Not agreed by RTA]

- (ii) after completion of the Property Works with respect to a Parcel, including the work described in clause 7.9(e), provide to RTA's Representative:
 - (A) a certificate in the form of Schedule [6] to the Certification Schedule, duly executed by the owner or owners of any part of the Parcel not acquired by RTA; or
 - (B) a statement signed by the Company to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule ## to the Certification Schedule within 15 Business Days of it being provided by the Company to the owner or owners following completion of the Property Works in accordance with the requirements of the M5 West Widening Deed including the work described in clause 7.9(e) ~~of this Annexure A.~~
- (b) The acceptance of a certificate or statement provided by the Company under clause 7.9(a)(ii) by RTA is not approval by RTA of the Company's performance of its obligations under this clause 7.9.
- (c) Where any Property Works are required to be carried out on a Parcel the Company must give a written notice to the owner or owners of the property (with a copy to RTA's Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) specifies the intended date for commencement of the Property Works; and
 - (iii) requests access for the purpose of carrying out the Property Works, not less than 15 Business Days prior to the day upon which the Company intends to commence the Property Works.
- (d) Upon being given access to any property for the purpose of carrying out any Property Works, the Company must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (e) The Company must:
 - (i) rehabilitate each Parcel not owned by RTA at least to the state it was in immediately prior to the Company obtaining access; and
 - (ii) otherwise repair any damage or degradation to each such Parcel arising out of or in any way in connection with the performance of its obligations under this clause 7.9.
- (f) The:
 - (i) completion of all Property Works under this clause 7.9 including all work under clause 7.9(e); and

- (ii) provision of all certificates or statements (as the case may be) to RTA's Representative under clause 7.9(a)(ii),

is a condition precedent to Final Completion.

- (g) Section ## of the Scope of Works and Technical Criteria:

- (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of Property Works in clause 1.1; and
- (ii) does not limit or otherwise affect the Company's obligations under the M5 West Widening Deed in relation to the Property Works.

RTA note: Interlink Roads has sought the inclusion of new paragraph (h) to cover the scenario if the owner or occupier of a Parcel fails or refuses to provide Interlink with the necessary access to the Parcel. To be further discussed in the context of architectural treatments

7.10 Signage

- (a) Subject to clause ## of the M5 Motorway Deed, the Company must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Project Works, the Temporary Areas or the Project Site (or permit any third party to do so) which comprise a Stage at any time prior to the Date of Construction Completion of that Stage.
- (b) Prior to the Date of Construction Completion of a Stage, the Company may only (with the prior written approval of RTA's Representative (acting reasonably)) erect the following signage on or near the Project Site, the Temporary Areas or Local Roads (as applicable) comprising that Stage:
 - (i) temporary directional signage to assist businesses in the vicinity of the Project Site or the Temporary Areas, access to which has been, or is likely to be, adversely ~~effected~~affected by the Company's Work;
 - (ii) signage required by Law or reasonably required for the safety and security of the Project Works and the Temporary Works;
 - (iii) project identification signage approved by RTA's Representative (acting reasonably);
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Company's Work; and
 - (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Project Site or the Temporary Areas.

For the avoidance of doubt, the Company may not erect, install, paint or display any such signage under this clause 7.10(b) on or near any part of the M5 Motorway that does not form part of the Project Site without RTA's prior written approval.

- (c) All signs erected in accordance with this clause 7.10 must be removed, and any damage caused must be made good, by the Company as a condition precedent to Final Completion.
- (d) Any signage already existing at the date of the M5 West Widening Deed to the extent that that signage has been properly approved pursuant to the provisions of

the M5 Motorway Deed, and any signage which is subsequently approved pursuant to the provisions of the M5 Motorway Deed, and erected in accordance with that approval will be deemed to be approved under this clause 7.10.

- (e) Should the Company wish to move (either temporarily or permanently) any signage which has been approved by RTA under the M5 Motorway Deed or under clause 7.10(b), the Company must obtain the RTA's prior **written** approval (acting reasonably) to the new location and the provisions of clause 7.6 of the M5 Motorway Deed shall apply. The RTA's approval shall not relieve the Company of its other obligations under the M5 West Widening Deed including the obligation to comply with the Law.

7.11 As constructed documentation and reports

The Company must prepare and submit to RTA's Representative and the Independent Verifier as constructed documentation, Construction Completion reports and pavement reports as required by and in accordance with the requirements of the Company Documentation Schedule.

7.12 Cleaning up

In carrying out the Company's Work, the Company must:

- (a) keep the Project Site and any other areas affected by the Company's Work clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Project Site and any other areas affected by the Company's Work; and
- (c) as a condition precedent to Construction Completion, remove all rubbish, surplus material, plant, equipment and Temporary Works from the Project Site and any other areas affected by the Company's Work except where:
 - (i) the retention of any of these are required for the correction of Defects during the Defects Correction Periods; and
 - (ii) such retention is approved in writing by RTA's Representative.

8. CHANGES

8.1 Changes proposed by RTA

RTA may require the Company to carry out a Change in accordance with the following procedure:

- (a) RTA's Representative may require the Company to carry out a Change by issuing a document entitled "Change Order" which sets out details of the proposed Change;
- (b) within 15 Business Days of receipt of a "Change Order" from RTA under clause 8.1(a), the Company must provide RTA with a **written** notice containing:
 - (i) its estimate of the Change Costs or Change Savings involved in the Change, 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 the M5 West Widening Deed which will be adversely altered by the proposed Change;

- (iii) details of the quality standards, warranties and other obligations (including the Date for Construction Completion of any Stage and the Date for Final Completion) required under the M5 West Widening Deed which will be adversely affected by the proposed Change; and
 - (iv) any other information requested by the "Change Order" (if applicable);
- (c) within 15 Business Days of receipt of ~~that~~the notice given under clause 8.1(b) RTA's Representative must:
- (i) give a written notice to the Company that it withdraws the relevant "Change Order", in which case the Company is not obliged to carry out the "Change Order";
 - (ii) give a written notice to the Company that it agrees with the matters referred to in the Company's notice, in which case the Company must proceed to carry out the "Change Order" and the Company's obligations under the M5 West Widening Deed and the other matters referred to in clause 8.1(b) will be varied to the extent set out in the notice given under clause 8.1(b); or
 - (iii) give a written notice to the Company that it disagrees with the matters referred to in the Company's notice and requires the dispute to be referred for determination under clause ## of the M5 West Widening Deed in which case, subject to clause 8.1(d), the Company is not obliged to carry out the "Change Order" until the dispute has been determined under clause ## of the M5 West Widening Deed and the Company's obligations under the M5 West Widening Deed and the other matters referred to in clause 8.1(b) will be varied to the extent set out in the notice given under clause 8.1(b) and agreed by RTA or, to the extent that agreement is not reached, as determined in accordance with clause ## of the M5 West Widening Deed; and
- (d) RTA's Representative may direct the Company to comply with a "Change Order" whether or not the matters referred to in clause 8.1(b) have ~~yet~~ been agreed between RTA's Representative and the Company or determined in accordance with clause ## of the M5 West Widening Deed. In that case, the Company must proceed to carry out the Change and the Change Costs or Change Savings will, until RTA's Representative and the Company otherwise agree or a determination is made in accordance with clause ## of the M5 West Widening Deed, be ~~deemed to be the amount set out in the Company's notice under clause 8.1(b)~~the amount as reasonably determined by RTA's Representative -and payment will be made on that basis.

8.2 Changes proposed by the Company

- (a) The Company may propose a Change to RTA's Representative by giving a written notice with details of:
- (i) the proposed Change;
 - (ii) the reason for the proposed Change;
 - (iii) the effect of the proposed Change on other elements of the Project Works;
 - (iv) the effect of the proposed Change on the M5 Motorway including the operation, maintenance and repair of the M5 Motorway, both during the period of carrying out of the Company's Work and after Final Completion;

- (v) the effect of the proposed Change on the Overall D&C Program and Subsidiary D&C Programs; and
 - (vi) the estimated Change Costs or Change Savings arising from the proposed Change.
- (b) If the Company proposes a Change under clause 8.2(a) the Company **will must**, if required by RTA's Representative, give to RTA's Representative:
- (i) a written statement stating that the proposed Change:
 - (A) will not adversely affect the functional integrity of any of the elements of the Project Works and the performance standards required by the M5 West Widening Deed;
 - (B) will not adversely affect the quality standards, warranties and other obligations required under the M5 West Widening Deed;
 - (C) will not adversely affect the functional integrity of any of the elements of the M5 Motorway and the performance standards required by the M5 Motorway Deed; and
 - (D) will not adversely affect the quality standards, warranties and other obligations (including those in relation to operation, maintenance and repair of both the M5 Motorway and the Project Works) under the M5 Motorway Deed; and
 - (ii) any other information and supporting documentation RTA's Representative requires.
- (c) RTA's Representative:
- (i) in its absolute discretion, may approve or reject any Change the Company proposes; and
 - (ii) will be under no obligation or duty to approve any such Change for the convenience of or to assist the Company.
- (d) If RTA's Representative approves a Change proposed by the Company:
- (i) it will issue a written direction entitled "Change Order"; and
 - (ii) the Company must thereafter carry out the Change.
- (e) Unless otherwise agreed in writing by RTA's Representative, the Company will **must** bear all costs:
- (i) associated with proposing a Change and providing the details under clause 8.2(b) and complying with clause 8.2(b);
 - (ii) reasonably incurred by RTA in assessing a Change proposed by the Company; and
 - (iii) associated with carrying out a Change proposed by the Company.

8.3 Payment for Changes

- (a) If a Change directed by RTA's Representative in accordance with clause 8.1 results in Change Costs, RTA must pay the Company the Change Costs (as agreed under clause 8.1 or determined in accordance with clause ## of the M5

West Widening Deed) in accordance with this clause 8.3. Unless otherwise agreed, RTA must pay the Company these Change Costs progressively within 10 Business Days after each month in which the relevant work was undertaken.

- (b) If a Change directed by RTA's Representative under clause 8.1 or clause 8.2(d) results in Change Savings (or in the case of a Change directed by RTA's Representative under clause 8.2(d), is expected to result in Change Savings, as advised by the Company under clause 8.2(a)), RTA and the Company agree that:
- (i) in the case of a Change directed by RTA's Representative under clause 8.1, RTA is entitled to receive 100% of the Change Savings; and
 - (ii) in the case of a Change directed by RTA's Representative under clause 8.2(d), RTA is entitled to receive 50% of the greater of:
 - (A) the actual Change Savings; and
 - (B) the estimated Change Savings (as advised by the Company under clause 8.2(a)).
- (c) Where an amount is payable to RTA pursuant to clause 8.3(b) ~~then~~:
- (i) to the extent that it relates to the Company's Work, this may be set off against Change Costs in respect of the Company's Work payable by RTA to the Company under clause 8.3(a) or where this is not set-off it must be paid by the Company to RTA progressively within 10 Business Days after each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Change; or
 - (ii) to the extent that it relates to the operation, maintenance and repair of the M5 Motorway or the Project Works, the Company must pay this to RTA in the manner and at the time as agreed between RTA and the Company or, to the extent that they fail to agree, as determined by an expert in accordance with clause ## of the M5 West Widening Deed.
- (d) Except where the Company is directed to carry out a Change pursuant to a "Change Order" issued by RTA's Representative under clause 8.1(a), RTA will not be liable to the Company for any Loss or otherwise upon any Claim arising out of or in any way in connection with any Change.

9. TIME

9.1 Commencement and progress

The Company must:

- (a) promptly start to perform the Company's Work from the Satisfaction Date; and
- (b) consistent with its obligations under clause 9.2, expeditiously and diligently progress the Company's Work.

9.2 Completion

The Company must use its best endeavours to achieve:

- (a) Construction Completion of a Stage ## by the Date for Construction Completion of that Stage ##; and

RTA note: RTA and Interlink to discuss whether or not there will be "Stages". i.e. whether or not there will be separate Construction Completion regimes

for each Stage or otherwise whether there is one Construction Completion for the entire works. The decision on this issue will require consequential changes to a number of aspects of these D&C Terms. Accordingly, this note is not repeated in each of those other instances, but will be addressed once the commercial decision has been made by the parties. RTA's initial view is that it does not believe there is a need for Stages. However, Interlink to advise as to its position in light of its program

- (b) Final Completion by the Date for Final Completion.

9.3 Delay

If:

- (a) the Company becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Construction Completion of any Stage by the Date for Construction Completion of that Stage or in achieving Final Completion by the Date for Final Completion; or
- (b) RTA's Representative reasonably believes that the Company will not achieve Construction Completion of any Stage by the Date for Construction Completion of that Stage or ~~in achieving~~ Final Completion by the Date for Final Completion and gives the Company a written notice to that effect,

the Company must promptly and in any event within 2 Business Days:

- (c) in the case of clause 9.3(a), ~~immediately~~ give RTA's Representative a written notice setting out detailed particulars of the delay together with a detailed corrective action plan which the Company proposes to implement to mitigate the effects of the delay; and
- (d) in the case of clause 9.3(b), provide RTA's Representative with a detailed corrective action plan showing how it proposes to mitigate the effects of the delay.

9.4 Mitigation

The Company must take all reasonable steps to mitigate any delay caused by, or any other effect of, a failure by RTA to give, or ensure that the Company has, access to the Project Site or the Temporary Areas in accordance with clause 2, including making any changes to the sequencing or timing of, or the construction methodologies used in, the Company's Work and changing the Subsidiary D&C Programs to reflect this.

9.5 Corrective action plan

- (a) RTA's Representative may within 5 Business Days of receipt of a corrective action plan under clause 9.3 give written notice to the Company that it does not believe that implementation of the corrective action plan will enable the Company to mitigate the effects of the delay.
- (b) If RTA's Representative gives the Company a notice under this clause 9.5 the Company must amend and resubmit the corrective action plan to RTA's Representative after which this clause 9.5 will continue to apply until RTA's Representative does not issue a notice under this clause 9.5.
- (c) The Company must thereafter comply with a corrective action plan for which RTA does not issue a notice under this clause 9.5.
- (d) The Company will not be relieved of any liability or responsibility under the M5 West Widening Deed or otherwise at Law arising out of or in connection with:

- (i) any notice given by RTA's Representative under clause 9.3(b) or this clause 9.5; or
- (ii) implementation of any corrective action plan in respect of which RTA's Representative has or has not issued a notice under this clause 9.5.

10. COMPLETION

10.1 Completion process

- (a) The Company must give RTA's Representative and the Independent Verifier both:
 - (i) 3 months; and
 - (ii) 1 month,prior written notice of the estimated Date of Construction Completion of any Stage and the estimated Date of Final Completion.
- (b) RTA's Representative, the Company's Representative and the Independent Verifier must, within 7 days of receipt of the notice referred to in clause 10.1(a)(ii), undertake a joint inspection of the Company's Works included in that Stage or in Final Completion at a mutually convenient time. It is acknowledged that a representative of the Contractor may attend that joint inspection of the Company's Work.
- (c) Following the joint inspection referred to in clause 10.1(b), the Independent Verifier may give the Company (with a copy to RTA) a written notice either:
 - (i) containing a list of items which it believes must be completed before Construction Completion or Final Completion is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Construction Completion or Final Completion that it is not practicable to issue a list as contemplated in clause ~~10.1(c)(ii)~~ 10.1(c)(i).
- (d) When the Company considers it has achieved Construction Completion of a Stage or Final Completion, the Company must issue a certificate in the form of Schedule ## to the Certification Schedule, duly executed by the Company to RTA's Representative and the Independent Verifier stating the date on which the Company considers Construction Completion of the Stage or Final Completion as the case may be was achieved.
- (e) The Parties acknowledge that within 15 Business Days of receipt of the certificate under clause 10.1(d), the Independent Verifier is required to either:
 - (i) determine whether Construction Completion of the relevant Stage or Final Completion as the case may be has occurred and either issue:
 - (A) if Construction Completion or Final Completion as the case may be has occurred, a Certificate of Construction Completion for that Stage or a Certificate of Final Completion as the case may be under clause 10.2; or
 - (B) if Construction Completion or Final Completion as the case may be has not occurred, a written notice to the Company and RTA's Representative of the list of work remaining to be performed to achieve Construction Completion of that Stage or a Certificate of Final Completion as the case may be; or

- (ii) issue a written notice to the Company and RTA's Representative stating that the Project Works and Temporary Works for that Stage or Final Completion as the case may be are so far from Construction Completion or Final Completion as the case may be that it is not practicable to form an opinion under clause 10.1(e)(i)(B) after which the Company must continue to diligently pursue Construction Completion of that Stage or Final Completion as the case may be.
- (f) Immediately upon receipt of a notice of a kind referred to in clause 10.1(e)(i)(B), the Company must perform or procure the performance of the work specified in that notice as soon as practicable.
- (g) The Company must give notice to RTA's Representative and the Independent Verifier when the work specified in the Independent Verifier's notice under clause 10.1(e)(i)(B) has been completed.
- (h) Clauses 10.1(e) and 10.1(f) will apply in respect of the Company's notice under clause 10.1(g) in the same way as if it were the original notice given under clause 10.1(d). The Company acknowledges that the Independent Verifier, in making its determination as to whether Construction Completion of ~~that the~~ relevant Stage or Final Completion as the case may be has occurred:
 - (i) will not be restricted by the list which it previously provided to the Company under clause 10.1(e)(i)(B); and
 - (ii) will be entitled to raise any other items of work (other than the Defects referred to in paragraph (a) of the definition of Construction Completion) as a ground for determining that Construction Completion of that Stage or Final Completion as the case may be has not occurred.

10.2 Certificate of Construction Completion

Subject to clause 10.3, where the Independent Verifier determines Construction Completion of a Stage or Final Completion as the case may be has occurred it must issue to the Company and RTA's Representative a Certificate of Construction Completion or Final Completion as the case may be within the time required by clause 10.1(e) certifying that Construction Completion of that Stage or Final Completion as the case may be has taken place and the date this occurred.

10.3 Effect of Certificate of Construction Completion

The Parties acknowledge that:

- (a) the Date of Construction Completion set out in the Certificate of Construction Completion for a Stage or the Date of Final Completion as set out in the Certificate of Final Completion (as the case may be) will be final and binding for all purposes and not capable of challenge on any basis other than manifest error; and
- (b) subject to clause 10.3(a), the issue of a Certificate of Construction Completion or Final Completion (as the case may be) will not:
 - (i) constitute an approval by RTA of the Company's performance of its obligations under the M5 West Widening Deed or evidence that the Company's Work included in that Stage or Final Completion as the case may be) is in accordance with the M5 West Widening Deed; or
 - (ii) prejudice any rights or powers of RTA.

10.4 Opening of the M5 West Widening

- (a) No individual Stage of the M5 West Widening may be opened for public use prior to the Date of Construction Completion of that Stage.
- (b) 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(s) of the M5 West Widening comprised in that Stage to the public for the safe, efficient and continuous passage of vehicles.

11. DEFECTS CORRECTION PERIODS

11.1 Defects or omissions

Notwithstanding that Construction Completion of a Stage or Final Completion (as the case may be) may have occurred, the Company must, as soon as practicable after Construction Completion or Final Completion (as the case may be), correct any Defects which existed at the time of the issue of the Certificate of Construction Completion or at Final Completion (as the case may be).

11.2 RTA direction

- (a) The Company must correct all Defects in the Project Works during the relevant Defects Correction Period.

[RTA note: Interlink propose that it is only required to correct Defects "the subject of a notice under clause 11.2(b)". Not agreed by RTA as Interlink should correct all Defects whether or not so notified]

- (b) Without limiting clause 11.2(a), if during a Defects Correction Period, RTA's Representative discovers or believes there is a Defect in the Project Works, RTA's Representative may, without prejudice to any other rights which RTA may have under the M5 West Widening Deed or otherwise at Law, give the Company a written direction specifying the Defect and:
 - (i) requiring the Company to correct the Defect or a part of it and specifying a reasonable time within which this must occur and other matters (if any) associated with the carrying out of the rectification work;
 - (ii) requiring the Company to carry out a Change to overcome the Defect or any part of it and specifying a reasonable time within which this must occur and other matters (if any) associated with the carrying out of the Change; or
 - (iii) advising the Company that RTA will accept the work or any part of it despite the Defect.

[RTA note: Interlink propose that it is only required to correct Defects "for which the Company is responsible". Not agreed by RTA – see definition of Defect]

- (c) If the Company disagrees with any direction given by RTA's Representative pursuant to clause 11.2(b) (including any time period in which the Company is required to rectify the Defect), it must within 10 Business Days of receipt of such a notice give written notice of its disagreement to RTA's Representative. RTA's Representative and the Company must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days thereafter, either Party may by written notice to the other and the Independent Verifier refer the matter for determination by the Independent Verifier,

who must within 10 Business Days make a determination as to the matter and notify the Parties in writing of its determination.

11.3 Correction of Defect

If a direction is given under clause 11.2(b) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works and the Company does not give a written notice under clause 11.2(c) or, if it does, the Independent Verifier determines that a Defect exists, the Company must correct the Defect (or the part of it):

- (a) within the time specified in RTA's Representative's direction (as varied if at all by the determination of the Independent Verifier);
- (b) at times agreed with RTA's Representative and in accordance with the requirements of any relevant Authority;
- (c) so as to minimise the impact on the use of the relevant part of the M5 West Widening, M5 Motorway, ~~the~~ Local Road Works, Service Works or Property Works; and
- (d) in a manner which causes as little inconvenience as possible to users of the M5 West Widening, M5 Motorway, any Local Road, a Service, the Property Works or any access and the adjacent community.

11.4 M5 West Widening

Subject to clauses 11.5, 11.6 and 11.7, each Stage of the Project Works has:

- (a) a Defects Correction Period which begins on the Date of Construction Completion of that Stage and ends at the expiry of 12 months after the Date ~~for~~of Final Completion; and
- (b) a further Defects Correction Period in respect of any work the subject of a direction under clause 11.2(b) during the Defects Correction Period for that Stage which begins on the date of the correction of the Defect (or the part of it) and ends on the date which is 12 months after the date of the correction of the Defect (or the part of it).

11.5 Local Road Works

- (a) Each discrete part of the Local Road Works has:

- (i) a Defects Correction Period which begins when:

- (A) the relevant discrete part of the Local Road Works is complete (being the date notified under clause 11.5(e)(i)); and
- (B) RTA's Representative and the Independent Verifier have been provided with a copy of that notice,

and ends on the date which is 2 years after the Date of Construction Completion of the Stage comprising the relevant discrete part of the Local Road Works; and

- (ii) a further Defects Correction Period in respect of any work the subject of a direction under clause 11.2(b) (relating to the discrete part of the Local Road Works) during the Defects Correction Period, which begins on the date of the correction of the Defect and ends on the date which is 2 years thereafter.

- (b) The completion of the Local Road Works will be assessed on a road by road basis.
- (c) When the Company considers that each discrete part of the Local Road Works is complete, subject to clause 11.5(d), it must notify the Independent Verifier and RTA's Representative in writing and the Independent Verifier, RTA's Representative, the Company's Representative and the representative of any relevant Authority must jointly inspect the relevant Local Road Works at a mutually convenient time. It is acknowledged that a representative of the Contractor may attend that joint inspection of the relevant Local Road Works.
- (d) In the case of any Local Road Works in respect of the roads referred to in ~~the~~ sections ## of the Scope of Works and Technical Criteria, the Company must not give notice under clause 11.5(c) prior to the date which is 10 Business Days before the anticipated Date of Construction Completion.
- (e) Following the joint inspection under clause 11.5(c), ~~RTA's Representative~~the Independent Verifier must notify the Company (with a copy to RTA) in writing:
- (i) if the discrete part is complete, of the date on which the Company has completed the discrete part of the Local Road Works in accordance with the M5 West Widening Deed, which, subject to clause 11.5(f)(i), will be the relevant date for the purposes of clause 11.5(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 11.5(c) will reapply).
- (f) Subject to clause 11.5(g), it is a condition precedent to:
- (i) the commencement of the Defects Correction Period for a discrete part of the Local Road Works that the Company provide RTA's Representative with a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; and
 - (ii) Construction Completion of the Stage comprising the relevant discrete part of the Local Road Works that the written notices required under clause 11.5(f)(i) have been provided to RTA's Representative for all discrete parts of the Local Road Works.
- (g) If the Company demonstrates to the satisfaction of RTA's Representative that an Authority has failed to provide a written notice required under clause 11.5(f), despite the Company using its best endeavours to obtain the written notice, and that failure has prevented:
- (i) the commencement of the Defects Correction Period applicable to a discrete part of the Local Road Works; or
 - (ii) the Company achieving Construction Completion,

RTA's Representative may, in his or her absolute discretion, waive the requirement for the Company to obtain the written notice as a condition precedent to the commencement of the relevant Defects Correction Period or Construction Completion (as the case may be).

RTA note: Interlink propose that RTA's Representative "acts reasonably" rather than with an absolute discretion. In the context of this paragraph (g), not agreed by RTA

11.6 Service Works

Each discrete part of the Service Works has:

- (a) a Defects Correction Period which begins when:
 - (i) the relevant Authority which has jurisdiction in respect of the Service gives written notice to the Company that the work is complete; and
 - (ii) RTA's Representative and the Independent Verifier have been provided with a copy of ~~this~~ notice,and which expires 12 months after the Date of Construction Completion of the Stage comprising the relevant discrete part of the Service Works; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 11.2(b) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or ~~the~~ part of it).

11.7 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period which begins upon the later of:
 - (i) the completion of that discrete part of the Property Works; and
 - (ii) the submission by the Company to RTA's Representative and the Independent Verifier of a certificate or signed statement (as the case may be) under clause 7.9(a)(ii),and which expires 12 months after the Date of Construction Completion of the Stage comprising the relevant discrete part of the Property Works; and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 11.2(b) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it).

11.8 Failure by the Company to comply with direction

- (a) Without limiting clause ## of the M5 West Widening Deed, if the Company does not comply with a direction given under clause 11.2(b), RTA may, after giving at least 2 Business Days' notice of its intention to do so to the Company, employ others to carry out that direction.
- (b) The Loss suffered or incurred by RTA in taking the action contemplated in clause 11.3(a) or as a result of the Company's failure to comply with clause 11.3 will be a debt due and payable from the Company to RTA.

11.9 Rights not affected

Neither RTA's rights, nor the Company's liability, whether under the M5 West Widening Deed or otherwise according to ~~the~~ Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period, will be in any way affected or limited by:

- (a) the rights conferred upon RTA's Representative or the Independent Verifier by this clause 11 or any other provision of the M5 West Widening Deed;

- (b) the exercise of, or the failure by RTA's Representative or the Independent Verifier to exercise, any such rights; or
- (c) any direction of RTA's Representative under this clause 11.

11.10 Use of defective facilities

The Company must:

- (a) ~~not allow the use of any part of the Project Works or the Temporary Works which the Company knows are defective or unsafe and which threaten the safety of members of the public; and-~~
- (b) ~~promptly notify RTA if the Company knows that any part of the Project Works or the Temporary Works are defective or unsafe or threaten the safety of members of the public.~~

12. SECURITY BONDS

12.1 Provision of Security Bonds

On or before the date of the M5 West Widening Deed, the Company must give RTA two unconditional undertakings each of which must be:

- (a) for an amount of [~~\$insert~~] and [~~\$insert~~];
- (b) in the form of Schedule 1;
- (c) in favour of RTA; and
- (d) where required, duly stamped and given by a bank licensed in Australia satisfactory to RTA with a credit rating of no less than A - (S&P) with an address for service in Sydney.

[AAR Note: Interlink would like to discuss with RTA the purpose of the bonds and whether they can be provided upon Final Completion to secure obligations in relation to defects]

[RTA note: RTA seeks two bonds – one to be released on Final Completion and the other to be released at the end of the last Defects Correction Period]

12.2 Release of Security Bonds

Subject to its rights to have recourse to the unconditional undertakings, RTA must:

- (a) within 20 Business Days after the Date of Final Completion, release ~~one the first mentioned of the~~ unconditional undertaking provided by the Company under clause 12.1; and
- (b) within 20 Business Days after the later of:
 - (i) the date of expiry of the final Defects Correction Period; and
 - (ii) receipt by RTA of each release or statement required pursuant to clause 2.3(a)(ii),

release the remaining unconditional undertaking provided by the Company under clause 12.1.

12.3 Interest

RTA:

- (a) is not obliged to pay the Company interest on:
 - (i) any unconditional undertaking; or
 - (ii) the proceeds of any unconditional undertaking if it is converted into cash; and
- (b) does not hold the proceeds referred to in clause 12.3(a)(ii) on trust for the Company.

12.4 Company not to injunct

The Company must not take any steps to injunct or otherwise restrain:

- (a) any issuer of the unconditional undertakings provided under this clause 12 from paying RTA pursuant to the unconditional undertakings;
- (b) RTA from taking any steps for the purposes of making a demand under the unconditional undertakings provided under this clause 12 or receiving payment under any such unconditional undertakings; or
- (c) RTA using the money received under the unconditional undertakings provided under this clause 12.

RTA note: Interlink propose the inclusion of a new clause 12.5 which is to describe the purpose of the unconditional undertakings. Not agreed by RTA

13. MAINTENANCE MANUAL

13.1 Operation, maintenance, repair and surrender

The Company must operate, maintain, repair and surrender the M5 West Widening in accordance with the operation, maintenance, repair and surrender requirements of the M5 Motorway Deed.

13.2 Maintenance Manual

- (a) As a condition precedent to Final Completion, the Company must update, develop and amend the Maintenance Manual to incorporate the Maintenance Work associated with the M5 West Widening and identify the methods, systems and procedures (which must comply with the Scope of Works and Technical Criteria) whereby the Company will operate, maintain and repair the M5 West Widening in accordance with the requirements of the M5 Motorway Deed.
- (b) The updates, development and amendments to the Maintenance Manual must be developed with consideration of the durability assessment reports that are required to be prepared by section ## of the Company Documentation Schedule.
- (c) The Maintenance Manual must be submitted to RTA's Representative and the Independent Verifier within 180 days of the date of the M5 West Widening Deed;
- (d) RTA's Representative may:
 - (i) review any Maintenance Manual submitted under this clause 13; and

-
- (ii) if the Maintenance Manual submitted does not comply with the M5 West Widening Deed, notify the Company of that within 15 Business Days of the submission of the Maintenance Manual.
 - (e) If the Company receives a notice under clause 13.2(d)(ii), the Company must promptly submit an amended Maintenance Manual to the Independent Verifier and RTA's Representative.
 - (f) RTA and RTA's Representative owe no duty to the Company to review the Maintenance Manual or any draft submitted by the Company for errors, omissions or compliance with the M5 West Widening Deed.
 - (g) No review of, comments upon, notice given in respect of the Maintenance Manual or any draft or any other act or omission of RTA or RTA's Representative in respect of the Maintenance Manual or any draft will lessen or otherwise affect:
 - (i) the Company's liabilities or responsibilities under the M5 West Widening Deed or otherwise according to Law; or
 - (ii) RTA's rights against the Company, whether under the M5 West Widening Deed or otherwise according to Law.
 - (h) The Company:
 - (i) warrants that, at Final Completion, **[RTA note: RTA still to confirm this change]** the Maintenance Manual will be fit for its intended purposes; and
 - (ii) agrees that compliance by it with the Maintenance Manual will not in any way lessen or otherwise affect:
 - (A) its liabilities or responsibilities under the M5 West Widening Deed or otherwise according to Law; or
 - (B) RTA's rights against it, whether under the M5 West Widening Deed or otherwise according to Law.

14. CHANGE IN LAW

14.1 No Claim

Subject to clause 14.2 and the M5 Motorway Deed, the Company will be liable for the consequences of, and will have no Claim against RTA arising out of or in any way in connection with, any changes in Law.

14.2 Clause 17.1

Clause 17.1 will apply if a Change in Law occurs.

15. LOSS OR DAMAGE AND INSURANCE

[AAR Note: Interlink reserves the right to make further comment in relation to loss or damage and insurance pending insurance broker review and comments]

[RTA note: This clause 15 is also subject to RTA insurance review]

15.1 Risk of loss or damage

- (a) The Company bears the risk of loss or damage to the Project Works and the Temporary Works at all times until the end of the Term.

- (b) The Company must, in accordance with clause 15.10, promptly make good any loss or damage to the Project Works, the Temporary Works, the M5 West Widening or a Stage (as applicable).

15.2 Liability and indemnity

- (a) The Company must indemnify RTA from and against any Claim or Loss suffered or incurred by RTA, in respect of:
- (i) any injury to, or disease or illness (including mental illness) or death of, persons;
 - (ii) the loss of, loss of use of (whether total or partial), or destruction or damage to, any real or personal property of any person (including RTA);
 - (iii) any disruption to any Services;
- RTA note: Interlink propose that paragraph (iii) be qualified by the words "not in accordance with the M5 West Widening Deed". Not agreed by RTA as paragraph (iii) is qualified appropriately by paragraphs (vii), (viii) and (ix)]**
- (iv) any economic loss arising out of loss, loss of use of, destruction, damage, injury, disease or death or disruption referred to in clauses 15.2(a)(i), 15.2(a)(ii) and 15.2(a)(iii);
 - (v) economic loss suffered or incurred by RTA or a third party;
 - (vi) without limiting the foregoing, any claim made by the owner or occupier of any Extra Land,
- caused by, arising out of, or in any way in connection with:
- (vii) the Company's Work ~~or the M5 West Widening~~;
 - (viii) RTA's ownership of the Project Site or the Temporary Areas; or
 - (ix) any failure by the Company to comply with its obligations under the M5 West Widening Deed.
- (b) Without limiting clause 15.2(a), the Company must indemnify RTA from and against any Claim or Loss suffered or incurred by RTA arising out of, or in connection with, the Company's breach of a term of the M5 West Widening Deed.
- (c) Clauses 15.2(a) and 15.2(b) do not lessen or otherwise affect the Company's other obligations under the M5 West Widening Deed.
- (d) The Company has the same responsibilities to third parties in respect of persons, property and all other aspects of the Project which it would have if it held the freehold title to the Project Site and the Temporary Areas.

RTA note: Interlink has sought the inclusion of a clause excluding consequential loss. Not agreed by RTA]

RTA note: Interlink has sought certain carve outs to clause 15.2. Under review by RTA]

RTA note: Interlink has sought inclusion of a clause regarding "Uninsurable Force Majeure Events". Still to be considered by RTA, including in the context of clause 17 discussion on the MAE regime]

15.3 Damage to third party property

- (a) Without limiting clause 15.2, where any loss of or damage to real or personal property (other than the Project Works, the Temporary Works, the M5 West Widening or the M5 Motorway) occurs which arises out of, or in any way in connection with, the Company's Work, ~~the M5 West Widening~~ or any failure by the Company to comply with its obligations under the M5 West Widening Deed, the Company must, at its cost, promptly repair any such loss or damage or, if the affected person agrees, reasonably compensate the affected person for that loss or damage (where the Company has a legal liability to do so).
- (b) Without limiting clause ## of the M5 West Widening Deed and subject to clause 15.3(c), if the Company fails to carry out any repair work or to pay reasonable compensation under clause 15.3(a), RTA may, after giving reasonable prior notice to the Company, carry out such work or pay any such reasonable compensation and any Loss suffered or incurred by RTA will be a debt due and payable from the Company to RTA.
- (c) If urgent action is required to avoid death, injury, loss or damage, RTA may take the action at the Company's cost and any Loss suffered or incurred by RTA will be a debt due and payable from the Company to RTA.
- (d) This clauses 15.3 does not relieve the Company from any of its obligations under the M5 West Widening Deed.

15.4 Insurances during the Company's Work

- (a) Before commencing the Company's Work the Company must effect and maintain or cause to be effected and maintained, under one or more policies of insurance (without requiring any risk to be insured twice), the following:
 - (i) a contract works or construction risks policy of insurance:
 - (A) insuring the Project Works, the Temporary Works, ~~the existing improvements on the Project Site or the Temporary Areas~~, **[RTA note: This deletion is still subject to RTA insurance review]** all things brought on to the Project Site or the Temporary Areas, and all things stored off the Project Site or Temporary Areas for incorporation into the Project Works or Temporary Works by the Company, the Contractor or any of their Subcontractors for the purpose of the Company's Work;
 - (B) against such risks as are reasonably required by RTA and on the basis set out in Exhibit D to the M5 West Widening Deed; and
 - (C) for a sum insured of not less than the full reinstatement or replacement value of the insured property plus an additional amount to cover the cost of demolition and removal of debris, fees for the project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement or completion of repair;
 - (ii) transit insurance (including wet marine insurance and cover for storage during transit) covering the risk of loss of or damage to relevant items intended to be employed about or used in the Company's Work during transit to the Project Site or Temporary Areas for a sum insured each conveyance of not less than 110% of the full replacement value on an indemnity basis of the items conveyed;

-
- (iii) public and products liability insurance written on an occurrence basis covering the liability of the Company, the Contractor, their Subcontractors and their respective officers, employees, consultants and agents for:
- (A) loss of, loss of use of, destruction or damage to, tangible property; and
- (B) injury to, or disease or death of, persons (other than a liability insured under the insurance referred to [atin](#) clause 15.4(a)(v)),
- arising out of or in connection with the Company's Work for a minimum of \$[tbc] million for each and every occurrence with respect to public liability and \$[tbc] million for each and every occurrence and in the aggregate for all occurrences in any one 12 month policy period with respect to products liability and including cover for loss or damage to the property of RTA in the care, custody or control of the insureds for a sublimit of not less than \$[tbc] each and every occurrence;
- (iv) professional indemnity insurance covering the liability of the Company for any breach of a duty owed in a professional capacity by the Company, the Contractor and any of their Subcontractors for a minimum of \$[tbc] million for any one claim and \$[tbc] million in the aggregate annually with one right of reinstatement;
- (v) workers' compensation insurance as required by Law;
- (vi) motor vehicle insurance covering third party property damage caused by plant, equipment and motor vehicles used in connection with the Project Works and third party injury or death caused by unregistered plant, equipment and motor vehicles used in connection with the Project Works for a minimum of \$[tbc] million for each and every occurrence and unlimited in the aggregate as to the number of occurrences;
- (vii) advance consequential loss or delay in start up insurance for a 24 month indemnity period covering all standing charges (including the Company's debt service obligations) and loss of anticipated net revenue; and
- (viii) directors and officers liability insurance for a minimum amount of \$[tbc] million per occurrence and in the aggregate annually.
- (b) The Company must maintain (or cause to be maintained) the insurances referred to in clause 15.4(a) until:
- (i) in the case of the directors and officers liability insurance, 7 years after the Date of Final Completion;
- (ii) in the case of the professional indemnity insurance, 7 years after the expiry of the last Defects Correction Period;
- (iii) in the case of the public and products liability insurance policy, workers compensation insurance and motor vehicle insurance, the expiration of the last Defects Correction Period; and
- (iv) in the case of the other insurances, the Date of Final Completion.

15.5 General requirements

- (a) All insurances which the Company is required to effect under this clause 15, with the exception of the workers compensation insurance:

-
- (i) must be effected with Relevant Insurers;
 - (ii) must be on the terms required by this clause 15 and Exhibit D to the M5 West Widening Deed and otherwise as approved by RTA (which approval will not be unreasonably withheld or delayed);
 - (iii) must not contain, or be amended to contain, any exclusion or endorsement, unless it is first approved in writing by RTA;
 - (iv) in the case of the insurances specified in clauses 15.4(a)(i), 15.4(a)(ii) and 15.4(a)(vii) must insure the Company and RTA and such others as have an insurable interest under the Project Documents (including the owners of the M7 Motorway and their operators and financiers) for their respective rights and interests and include a clause in which the insurer waives all rights of subrogation which it may have or acquire against all or any of the persons comprising the insured;
 - (v) in the case of the insurances specified in clauses 15.4(a)(i) and 15.4(a)(vi), must insure RTA for principal's liability;
 - (vi) must contain a term which requires the insurer to give RTA 20 Business Days notice in writing prior to:
 - (A) the insurer giving the Company a notice of cancellation;
 - (B) the insurer cancelling the policy on the request of the Company;
 - (C) the Company allowing the policy to expire; or
 - (D) the insurer giving the Company any other notice in respect of the policy;
 - (vii) the insurances specified in clauses 15.4(a)(iii) must contain a cross liability clause:
 - (A) in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (B) in which the insurer agrees to insure the liability of one insured to another insured;
 - (C) in which the insurer accepts the term insured as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (D) in which the insurer agrees not to impute any pre-contractual non-disclosures or post-contractual acts or omissions from one insured to another for the purpose of determining rights to cover under the policy; and
 - (viii) in the case of the insurances specified in clauses 15.4(a)(v) and 15.4(a)(vii), must be endorsed to note and allow the Company's obligations under clause 15.10, to the effect that compliance by the Company with the provisions of that clause will not prejudice the Company's or any other insured parties' rights to indemnity under the insurances.

(b) In relation to all the insurances the Company is required to effect under this clause 15, the Company must:

(i) give RTA certified copies of all:

(A) policies (with the exception of workers compensation insurance);

(B) policy schedules;

(C) renewal certificates; and

(D) endorsements,

no less than 10 Business Days prior to the commencement of the Company's Work and, thereafter, no more than 10 Business Days after it receives them from the insurer and at any other time within 5 Business Days of the receipt by the Company of a written request from RTA;

(ii) give RTA a certificate of currency for each insurance within 5 Business Days of the receipt by the Company of a written request from RTA;

(iii) ensure each policy, other than workers compensation insurance, provides that the insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty by any individual insured party shall not prejudice or invalidate the rights of the other parties comprising the insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of condition or warranty; and

(iv) ensure each policy, other than workers compensation insurance, provides that the insurer agrees that any insured can give notice of a claim and that notice by one insured of a claim will be treated as notice by all insureds.

15.6 Premiums

(a) The Company must punctually pay all premiums in respect of all insurance policies and give RTA copies of receipts for payment of premiums if and when requested by RTA.

(b) If the Company fails to effect or maintain any insurance policy referred to in this clause 15 or to pay a premium or other amount payable to the insurer in respect of such insurance, RTA may effect such insurance or pay such premium or other amount and any costs so incurred by RTA will be a debt due and payable to RTA by the Company.

15.7 Undertaking to inform

The Company must, subject to its obligations to insurers, inform RTA immediately it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by RTA against the Company) under any of the insurances referred to in this clause which could materially reduce the available limits of indemnity or which may involve RTA, and must reinstate or replace any depleted aggregate limit, resulting from claims that are unrelated to the Company's Works, if requested to do so in writing by RTA.

15.8 RTA insurance

The Company must not do anything which has been notified to the Company in writing by RTA that may invalidate any insurance policy held by RTA in relation to the Project Site or [the](#) Temporary Areas or any indemnity to which RTA may be entitled from the New South Wales Treasury Managed Fund.

15.9 Subcontractors

Notwithstanding any other provision of the M5 West Widening Deed, the Company must use its best endeavours to ensure that the Contractor and any Subcontractors and agents retained by the Company or the Contractor are insured as required by this clause 15, amended as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Company.

15.10 Reinstatement

If any loss or damage occurs to any part of the Project Works, the Temporary Works or a Stage, the Company must (without limiting its other obligations under this clause 15):

- (a) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
- (b) promptly consult with RTA and carry out such steps as are necessary to ensure:
 - (i) the prompt repair or replacement of the loss or damage so that:
 - (A) it complies with the Scope of Works and Technical Criteria; and
 - (B) there is minimal disruption to the Project Works, the Temporary Works and the Stage; and
 - (ii) that, to the greatest extent possible, the Company continues to comply with its obligations under the Project Documents;
- (c) manage all repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or the Stage;
- (d) keep RTA fully informed of the progress of the repair and replacement activities; and
- (e) subject to the RTA Consent Deed, apply all insurance proceeds in the repair or reinstatement of the Project Works, the Temporary Works or the Stage.

16. INTELLECTUAL PROPERTY

[RTA note: clause 16 has been developed since the initial draft supplied to Interlink back in February 2010. Accordingly, it is recognised that this clause 16 is still subject to review by RTA and Interlink]

16.1 Design Documentation, Concept Design and Maintenance Manual

- (a) Ownership of, and all Intellectual Property Rights in, the Design Documentation and the Maintenance Manual vests in RTA when each item of Design Documentation and the Maintenance Manual comes into existence. To the extent that the Company may at any time acquire any right, title or interest in the Design Documentation or Maintenance Manual, or any Intellectual Property Rights in the Design Documentation or Maintenance Manual, the Company, by this Annexure A, assigns to RTA, absolutely, all such right, title and interest. Upon request by RTA, the Company must do all things necessary to perfect the vesting of such ownership and Intellectual Property Rights in RTA.
- (b) The Company, as beneficial owner, by this Annexure A assigns to RTA, absolutely, all Intellectual Property Rights in the Concept Design.

- (c) The Company must procure that its Subcontractors and any agents of the Company or its Subcontractors, and any other third party who has created any aspect of the Concept Design, the Design Documentation or the Maintenance Manual, assign to RTA any Intellectual Property Rights held by the Subcontractors or agents in that aspect of the Concept Design, the Design Documentation or Maintenance Manual so that those Intellectual Property Rights vest in RTA on their creation.
- (d) In respect of the Design Documentation and Maintenance Manual, the assignment to RTA includes the right to sue for, and recover, damages and other relief in relation to any infringement of copyright in the Concept Design, the Design Documentation and the Maintenance Manual (including for conversion or detention) including any that may have occurred before the date of the M5 West Widening Deed.
- ~~(b)(e)~~ The RTA grants to the Company has an irrevocable non exclusive, non transferable licence to use the Concept Design, the Design Documentation and the Maintenance Manual to the extent necessary for performing the Project Works, the Temporary Works and the performance of its obligations under the M5 West Widening Deed.

16.2 Proprietary Software

- (a) The Company grants to RTA a perpetual, irrevocable, royalty-free and exclusive licence to use (including a right to sub-licence) any computer software (including both source code and object code versions) which is used by the Company in the performance of the Project Works or the Temporary Works ~~but which is not specifically created or specifically modified for the purposes of the Project Works or Temporary Works~~ **(Proprietary Software)**.
- (b) The licence in clause 16.2(a):
- (i) will permit RTA to use the Proprietary Software for all purposes associated with the Project Works or the Temporary Works or the general performance by RTA of its statutory functions;
 - (ii) will apply from when the Proprietary Software comes into existence; and
 - (iii) will survive the termination of the M5 West Widening Deed on any basis.

16.3 Warranty and indemnity

- (a) The Company warrants that:
- (i) ~~neither none of~~ the Concept Design, the Design Documentation, the Maintenance Manual, the Proprietary Software, the Project Works (including any plant, equipment or material forming part of the Project Works) nor any method of working used by the Company in performing the Project Works or the Temporary Works will infringe any Intellectual Property Right or any ~~moral-Moral right-Right of an artistic work~~ any person, nor give rise to any liability to make royalty or other payments to any person; and
 - (ii) it has or will have sufficient interest in the Concept Design, the Design Documentation, the Maintenance Manual and Proprietary Software to comply with its obligations under clauses 16.1 and 16.2(a).
- (b) The Company must indemnify RTA against any Claim or Loss suffered or incurred by RTA arising out of or in connection with the Concept Design, the Design

Documentation, the Maintenance Manual, the Proprietary Software, the Project Works (including any plant, equipment or materials forming part of the Project Works) or any method of working used by the Company in performing the Project Works or the Temporary Works infringing or allegedly infringing any Intellectual Property Right or any ~~author's moral rights~~ Moral Rights.

16.4 ~~Moral rights~~ Moral Rights

- (a) The Company must ensure that it obtains irrevocable and unconditional written:

RTA note: Interlink has sought that the words "ensure that it obtains" be amended to read "use its best endeavours to obtain". Not agreed by RTA

~~(i) _____~~ consents permitted by applicable law, for the benefit of RTA and the Company, from the author of any artistic work or literary work to be incorporated into, or used during the design, or construction of the Project Works, or incorporated into or forming part of the Concept Design, the Design Documentation or the Maintenance Manual, including any necessary consents from its employees and any consultants engaged by it and the employees and consultants of its Subcontractors, to:

~~(i)(A) _____~~ any non attribution or false attribution of authorship of the artistic work or literary work; and

(B) allow any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work, literary work or the Project Works,

whether occurring before or after the consent is given; and

~~(ii) _____~~ waivers of Moral Rights that are permitted by applicable law outside Australia from the author of any artistic work or literary work to be incorporated into, or used during the design or construction of the Project Works, or incorporated into or forming part of the Concept Design, the Design Documentation or the Maintenance Manual,

for the benefit of RTA, the Company, their licensees, successors in title and anyone authorised by any of them to do acts comprised in the copyright.

- (b) The terms **artistic work**, **literary work** and **attribution** have the meaning given to them in the Copyright Act 1968 (Cth).

17. MATERIAL ADVERSE EFFECT

17.1 Company to notify RTA

If:

- (a) a Change in Law occurs: or
- (b) a court makes (or makes in respect of a matter) a Final Determination which prevents the Company from undertaking the M5 West Widening substantially in accordance with the M5 West Widening Deed (except where the Final Determination is issued as a result of a default by the Company or its contractors under the Project Documents or some other wrongful act or omission by the Company or its contractors),

and this has had or has started to have a Material Adverse Effect, the Company:

- (c) may provide RTA with a notice of that fact, including full details of the effect of the event or circumstance on the Project; and
- (d) must use all reasonable endeavours to:
 - (i) mitigate the adverse consequences of the event or circumstance; and
 - (ii) ensure that redress afforded under this clause 17 is efficiently applied and structured (so as, for example, not to create or increase any liability for Taxes, the liability for which need not be incurred or need only be incurred to a limited extent).

17.2 Consequences of Material Adverse Effect

[Action: clause 17.2 still to be provided]

18. GENERAL

18.1 Set-off

- (a) RTA may deduct from the money which would otherwise be payable to the Company or moneys otherwise due to the Company:
 - (i) any debt or other moneys due from the Company to RTA; or
 - (ii) any claim to money which RTA may have against the Company whether for damages or otherwise,

whether under the M5 West Widening Deed or otherwise in relation to the Company's Work.

[RTA note: Interlink has sought the deletion of paragraph (a)(ii). Not agreed by RTA]

- (b) This clause 18.1 will survive the termination of the M5 West Widening Deed.

18.2 Provisions limiting or excluding liability

Any provision of the M5 West Widening Deed which seeks to limit or exclude a liability of RTA or the Company, is to be construed as doing so only to the extent permitted by Law.

18.3 Privacy

If under the M5 West Widening Deed the Company is required to disclose Personal Information, the Company must:

- (a) if the disclosure is not authorised under the Privacy Acts, obtain the consent of the natural person to whom that Personal Information relates in relation to RTA's collection and use of that Personal Information for the purposes of the M5 West Widening Deed or the purposes authorised by the M5 West Widening Deed;
- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
 - (i) that the Personal Information has been collected by or on behalf of RTA; and
 - (ii) of any other matters required by the Privacy Acts.

18.4 Rates and Taxes

The Company will be liable for:

- (a) all land-based rates, Taxes and charges, including municipal rates, water, sewerage and drainage rates and land tax in respect of the Project Site and the Temporary Areas; and
- (b) all other Taxes levied in respect of the Company's Work, whether in connection with the M5 West Widening, the performance of the Company's obligations under the M5 West Widening Deed or the execution of the M5 West Widening Deed and other Project Documents or otherwise.

18.5 Indemnities

- (a) No indemnity in this M5 West Widening Deed limits the effect or operation of any other indemnity in this M5 West Widening Deed.
- (b) Unless expressly provided otherwise, each indemnity in this M5 West Widening Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives the rescission, termination or expiration of this M5 West Widening Deed.

DRAFT

I certify that the attorney(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this [description of dealing, eg transfer] in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the attorney(s) named below who signed this [description of dealing, eg transfer] pursuant to the power of attorney specified.

Signature of witness

Signature of attorney(s)

Attorney['s/s'] name(s)

Name of witness

Signing on behalf of

Address of witness

Power of attorney - Book

- No

DRAFT

Schedule 2

FORM OF CERTIFICATE OF CONSTRUCTION COMPLETION

(clauses 1.1 and 10)

Given pursuant to clause 10 of Annexure A to the M5 West Widening Deed (**M5 West Widening Deed**) dated [] between the Roads and Traffic Authority and [Company].

TO: [Company]

1. Pursuant to and for the purposes of the Deed the Independent Verifier hereby certifies to the Company and to the Roads and Traffic Authority of New South Wales that all of the conditions precedent to Construction Completion of Stage [insert Stage number] have been achieved and that Construction Completion occurred on [].
2. This certificate is copied to the following:
 - (a) [Contractor]; and
 - (b) [financiers].
3. Capitalised terms defined in the M5 West Widening Deed have the same meaning where used in this certificate.
4. This certificate may only be relied on by the parties to the M5 West Widening Deed and the financiers.
5. This certificate is issued on [].

SIGNED for and on behalf of [Independent Verifier] by
in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

Schedule 3

CONSTRUCTION COMPLETION PRE-CONDITIONS

(clause 1.1)

1. The Project Works and the Temporary Works included in each Stage must be completed in accordance with the M5 West Widening Deed except for minor Defects that:
 - (a) do not prevent the M5 Motorway and M5 West Widening from being reasonably capable of being used for the safe, efficient and continuous passage of motor vehicles;
 - (b) the Independent Verifier determines that the Company has reasonable grounds for not promptly rectifying; and
 - (c) can be rectified without prejudicing the safe, efficient and continuous passage of vehicles on the M5 Motorway and M5 West Widening.
 2. In respect of ~~the~~ each Stage, RTA has been provided with:
 - (a) all certificates required by the Certification Schedule;
 - (b) a copy of all the independent road safety audits required by section ## of the Scope of Works and Technical Criteria;
 - (c) copies of Approvals from Authorities for the drainage design pursuant to section ## of the Scope of Works and Technical Criteria;
 - (d) copies of all Approvals required to open, use and operate the Stage;
 - (e) evidence of the insurance policies required by clause ~~15.4~~~~15.5~~ being effected in accordance with the M5 West Widening Deed; and

AAR Note: We query the relevance of this subclause given that it seems to relate to operational insurance

RTA note: no change proposed to clause 2(e) as this only relates to the relevant insurances in clause 15.4 being in place after Construction Completion as contemplated in clause 15.4(b)

 - (f) a notice in accordance with clause ## of the M5 West Widening Deed.
3. In addition to the requirements set out in paragraph 1 and 2, in respect of [Stage ##]:
 - (a) RTA has received:
 - (i) a summary prepared by the Quality Manager pursuant to clause 3.3(b)(ii) of Annexure A on all quality issues;
 - (ii) all documents relating to all non-conformances pursuant to clause 3.5(c) of Annexure A;
 - (iii) copies of all site investigation reports and property conditions surveys pursuant to section ## of the Scope of Works and Technical Criteria;
 - (iv) a contamination report in respect of each Temporary Area;

-
- (v) details of the location of Services pursuant to section ## of the Scope of Works and Technical Criteria; and
 - (vi) a written notice of the kind referred to in clause 11.5(e)(i) of this Annexure A from the relevant Authority for each discrete part of the Local Road Works;
 - (vii) a written notice of the kind referred to in clause 11.6(a)(i) of this Annexure A from the relevant Authority for each discrete part of the Service Works which is necessary or required to be completed so that the M5 West Widening may be opened to the public for the safe, efficient and continuous passage of motor vehicles; and
 - (viii) copies of "As Constructed Drawings" of the Project Works and other as constructed documentation required by the Company Documentation Schedule;
- (b) the Company has vacated and reinstated any land affected by or used for the purposes of the Temporary Works;
 - (c) the Company has provided RTA with the written releases or statements required by clause 2.3(a)(ii) of this Annexure A in respect of any Extra Land;
 - (d) RTA has approved the revised Maintenance Manual required under clause 13 of this Annexure A; and
 - (e) the Company has obtained and provided RTA with all warranties required by the M5 West Widening Deed from the relevant Subcontractors in favour of RTA on the terms in section ## of the Scope of Works and Technical Criteria. The provision of those warranties will not derogate from any rights which RTA may have against the Company in respect of the subject matter of those warranties.

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Schedule 4

RTA SUBCONTRACTOR PREQUALIFICATION

(clause 7.8(d))

Subcontractors for the following categories of work must be pre-qualified or registered in accordance with RTA procedures including to the appropriate level for the contract sum of the Subcontract:

1. Pre-qualified categories of work:
 - (a) roadworks;
 - (b) asphalt paving;
 - (c) protective treatment;
 - (d) bridgeworks;
 - (e) pretensioned concrete;
 - (f) concrete paving;
 - (g) steel fabrication; and
 - (h) intelligent transport systems

2. Registered categories of work:
 - (a) earthworks;
 - (b) drainage;
 - (c) bridge formwork erection;
 - (d) traffic control;
 - (e) demolition of properties;
 - (f) construction industry laboratories and
 - (g) urban design consultancies.

Schedule 5

PROJECT APPROVAL

PART A

[To be inserted following issue of the Planning Minister's Project Approval]

PART B

[This part will identify such of the conditions of the Project Approval which need not be satisfied by Interlink. In this regard see clause 4.1(c)]

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Schedule 6

COMPANY'S PERSONNEL

(clause 5.3)

Project Manager

- (a) The Project Manager must possess a recognised qualification relevant to the position and the Company's Work and be experienced in the design, construction and project management of large projects similar to the Project Works.
- (b) At the date of the M5 West Widening Deed, the Project Manager is [].

Design Manager

- (a) The Design Manager must possess a recognised qualification relevant to the position and the Company's Work and be experienced in the management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works.
- (b) The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of the M5 West Widening Deed including the Overall D&C Program and the Subsidiary D&C Programs).
- (c) At the date of the M5 West Widening Deed, the Design Manager is [].

Construction Manager

- (a) The Construction Manager must possess a recognised engineering degree relevant to the position and the Company's Work and have at least eight years experience in the overall management of construction on large projects similar to the Project Works.
- (b) The Construction Manager must be full-time on the Project Site during the construction phase.
- (c) At the date of the M5 West Widening Deed, the Construction Manager is [].

Quality Manager

- (a) The Quality Manager must:
 - (i) possess a recognised qualification relevant to the position, the Company's Work and verified relevant experience in quality management systems within the construction industry;
 - (ii) be full time during the execution of the Company's Work with responsibilities limited to quality management of the Company's Work unless RTA's Representative otherwise consents in writing (not to be unreasonably withheld or delayed);
 - (iii) have experience on projects similar to the Project Works;
 - (iv) be available as RTA's primary contact with the Company on matters of quality;
 - (v) give RTA's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and

-
- (vi) be given authority by the Company to act freely and independently and to stop the progress of the relevant part of the Company's Work when any non-conformance with the quality requirements of the M5 West Widening Deed is identified and at the specified Hold Points.

(b) At the date of the M5 West Widening Deed, the Quality Manager is [].

Environmental Manager

(a) The Environmental Manager must:

- (i) possess a recognised qualification and have recent relevant experience to the position in environmental management of similar projects;
- (ii) facilitate an induction and training programme for all persons involved in construction activities;
- (iii) be given authority by the Company to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works when any non-conformance with the environmental requirements of the M5 West Widening Deed is identified; and
- (iv) be engaged full time during the execution of the Company's Work until the Date of Construction Completion with responsibility to develop and implement the Environmental Management Plans.

(b) At the date of the M5 West Widening Deed, the Environmental Manager is [].

Community Relations Manager

(a) The Community Relations Manager must:

- (i) possess a recognised qualification relevant to the position and the Company's Work and have experience in community involvement on projects similar to the Project Works and an understanding of the community attitudes and needs in relation to the Project Works; and
- (ii) be available at all times:
- (A) to take a proactive role in the community relations processes relating to the Company's Work as set out in the M5 West Widening Deed; and
- (B) for contact by local residents and other community representatives to answer questions and deal with complaints relating to the Company's Work.

(b) At the date of the M5 West Widening Deed, the Community Relations Manager is [].

Schedule 7

ENVIRONMENTAL MANAGER'S CERTIFICATE

[*Insert project description*] ("**Project**")

To: RTA's Representative

From: [Insert Environmental Manager's name]
(ABN [Insert Environmental Manager's ABN])
 ("**Environmental Manager**")

In accordance with the terms of clause 5.4(b) of Annexure A to the deed titled "M5 West Widening Deed" between the Roads and Traffic Authority of New South Wales and Interlink Roads Pty Ltd (ABN 53 003 845 430) ("**Company**") dated [] with respect to the Project, I hereby certify that between the following dates [*Insert dates of preceding 3 month period*]:

- (a) the Company's Environmental Management System under section ## of the Scope of Works and Technical Criteria was in accordance with AS/NZS ISO 14001;
- (b) Contractor's and Subcontractors' Environmental Management Systems which form a part of the Company's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Company complied with and satisfied the requirements of RTA D&C G36;
- (d) the release of Hold Points was undertaken in accordance with Annexure A to the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Company was undertaken in accordance with Annexure A to the deed; and
- (f) that documentation was recorded and submitted to the Independent Verifier and RTA's Representative in accordance with Annexure A to the deed.

.....
Signed by

[*Insert Environmental Manager's name*]

Schedule 8

QUALITY MANAGER'S CERTIFICATE – PROGRESSIVE

[Insert project description] ("Project")

To: RTA's Representative

From: [Insert Quality Manager's name]
("Quality Manager")

In accordance with the terms of clause 3.3(c)(i) of Annexure A to the deed titled "M5 West Widening Deed" between the Roads and Traffic Authority of New South Wales and Interlink Roads Pty Ltd (ABN 53 003 845 430) ("**Company**") dated [] with respect to the Project, I hereby certify that between the following dates [Insert dates of preceding 3 month period]:

- (a) the Company's quality system was in accordance with RTA D&C Q6 and AS/NZS ISO 9001:2000 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Company complied with and satisfied the requirements of RTA D&C Q6;
- (c) Subcontractors' quality systems which form a part of the Company's quality system were in accordance with AS/NZS ISO 9001:2000;
- (d) the release of Hold Points was undertaken in accordance with Annexure A to the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Company was undertaken in accordance with Annexure A to the deed; and
- (f) that documentation was recorded and submitted to RTA's Representative and the Independent Verifier in accordance with Annexure A to the deed.

.....
Signed by

[Insert Quality Manager's name]

Schedule 9

QUALITY MANAGER'S CERTIFICATE – CONSTRUCTION COMPLETION / FINAL COMPLETION

[*Insert project description*] ("**Project**")

To: RTA's Representative

From: [Insert Quality Manager's name]
 ("**Quality Manager**")

In accordance with the terms of clause 3.3(c)(ii) of Annexure A to the deed titled "M5 West Widening Deed" between the Roads and Traffic Authority of New South Wales and Interlink Roads Pty Ltd (ABN 53 003 845 430) ("**Company**") dated [] with respect to the Project, I hereby certify that:

- (a) the Company has complied with and satisfied the requirements of RTA D&C Q6;
- (b) the Company has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes;
- (c) the release of Hold Points has been undertaken in accordance with Annexure A to the deed; and
- (d) all documentation has been recorded and submitted to the Independent Verifier and RTA's Representative in accordance with Annexure A to the deed.

.....
Signed by

[Insert Quality Manager's name]

Schedule 10

ENVIRONMENTAL QUALITY MANAGER'S CERTIFICATE – LAST DEFECTS CORRECTION PERIOD

[*Insert project description*] ("**Project**")

To: RTA's Representative

From: [*Insert Quality Manager's name*]
 ("**Quality Manager**")

In accordance with the terms of clause 3.3(c)(iii) of Annexure A to the deed titled "M5 West Widening Deed" between the Roads and Traffic Authority of New South Wales and Interlink Roads Pty Ltd (ABN 53 003 845 430) ("**Company**") dated [] with respect to the Project, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in Annexure A to the deed:

- (a) the release of Hold Points has been undertaken in accordance with Annexure A to the deed;
- (b) all design, construction, inspection, repairs and monitoring by the Company has been undertaken in accordance with Annexure A to the deed; and
- (c) all documentation has been recorded and submitted to RTA's Representative in accordance with Annexure A to the deed.

.....
Signed by

[*Insert Quality Manager's name*]

Schedule 11

INFORMATION DOCUMENTS

DRAFT

M5 West Widening project – Pre Commitment Agreement

Contract Disclosure

The RTA has withheld certain information, as allowed under Part 3, Division 5 Section 32 of the Government Information and Public Access (GIPA) Act 2009 and, in accordance with the Act, provides the following information.

Clause 7 Definitions	- financial information
Clause 29	- financial information
Schedule 6	- financial information

This information not only relates to the financial affairs of Interlink Roads, but would place the company at a substantial commercial disadvantage in relation to other contractors or potential contractors for future projects of a similar kind.