



WestConnex M4 Project Deed Amendment Deed

Roads and Maritime Services

ABN 76 236 371 088

and

WCX M4 PT Pty Ltd

ABN 59 614 741 436 in its personal capacity and in its capacity as trustee of the WCX M4 Project Trust (ABN 31 878 147 068)

and

WCX M4 AT Pty Ltd

ABN 61 614 741 445 in its personal capacity and in its capacity as trustee of the WCX M4 Asset Trust (ABN 30 972 117 496)

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Schedule

1. Amendments to the Project Deed

THIS DEED is made on

2018

BETWEEN:

- (1) **Roads and Maritime Services** ABN 76 236 371 088 of 20-44 Ennis Road, Milsons Point New South Wales, 2061 (**RMS**);
- (2) **WCX M4 PT Pty Ltd** ABN 59 614 741 436 of Level 33, 259 George Street, Sydney NSW 2000 (**Project Trustee**) in its personal capacity and as trustee of the WCX M4 Project Trust (ABN 31 878 147 068) (**Project Trust**); and
- (3) **WCX M4 AT Pty Ltd** ABN 61 614 741 445 of Level 33, 259 George Street, Sydney NSW 2000 (**Asset Trustee**) in its personal capacity and as trustee of the WCX M4 Asset Trust (ABN 30 972 117 496) (**Asset Trust**).

RECITALS:

- (A) RMS is a statutory body representing the Crown in the right of the State of New South Wales.
- (B) RMS, the Asset Trustee and the Project Trustee are parties to the Project Deed, under which:
 - (1) the Asset Trustee is responsible for the investigation, financing, funding, planning, design and construction, and commissioning of the M4 Motorway; and
 - (2) the Project Trustee is responsible for the operation, maintenance and repair of the M4 Motorway.
- (C) As contemplated by clause 36.1 of the Project Deed, the parties wish to amend certain provisions of the Project Deed in the manner set out in this deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

D&C Commitment Effective Date means the date on which the Conditions Precedent referred to in clause 5.2 of the M4-M5 Link Project Deed have been satisfied or waived in accordance with clause 5.2 of the M4-M5 Link Project Deed.

Effective Date has the meaning given in clause 4.1.

Longstop Date means [REDACTED], as may be extended by written agreement of all parties to this deed.

M4-M5 Link Project Deed means the deed titled "M4-M5 Link Project Deed" between RMS and the M4-M5 Link Trustees on or about the date of this deed.

M4-M5 Link Trustees means:

- (a) WCX M4-M5 Link AT Pty Limited (ACN 624 153 742); and
- (b) WCX M4-M5 Link PT Pty Limited (ACN 642 153 788).

O&M Deed Amendment Deed means the deed titled "WestConnex M4 O&M Deed Amendment Deed" between the Project Trustee and the Operator dated on or around the date of this deed to give effect to amendments required in the O&M Deed.

Project Company means WCX M4 Pty Limited ACN 602 963 806 of Level 33, 259 George Street, Sydney, New South Wales 2000.

Project Deed means the deed titled "WestConnex M4 Project Deed" between RMS and the Project Company dated 4 December 2014, as amended and restated on 3 June 2015 (and to which the Project Company novated its rights and obligations to the Project Trustee and the Asset Trustee by deed entitled "Project Deed Novation Deed" dated 23 November 2016 between RMS, the Project Company, the Project Trustee and the Asset Trustee).

Trust means each of Project Trust and Asset Trust and **Trusts** means both of them.

Trust Deeds means the Asset Trust Deed and the Project Trust Deed.

1.2 **Definitions in the Project Deed**

Definitions in the Project Deed apply in this deed unless the term is otherwise defined in this deed or the context requires otherwise.

1.3 **Rules for interpreting this deed**

Headings are for convenience only and do not affect interpretation. The following rules apply in interpreting this deed, unless the context makes it clear that a rule is not intended to apply:

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit of or to this deed.
- (f) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced from time to time, except to the extent prohibited by this deed or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- (j) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- (k) A reference to a court or tribunal is to an Australian court or tribunal.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward or drafted this deed or any part of it.

1.4 **Non Business Days**

If the day on or by which a person must do something under this deed is not a Business Day:

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

1.5 **Multiple parties**

If a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.6 **Requirement on a person not a party to this deed**

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

2. **CONSIDERATION**

Each party acknowledges that it has received valuable consideration for entering into this deed.

3. **AMENDMENT**

- (a) RMS, the Project Trustee and the Asset Trustee agree that on and from the Effective Date:
 - (i) the Project Deed is amended as set out in Schedule 1 to this deed; and
 - (ii) each of RMS, the Project Trustee and the Asset Trustee is bound by the Project Deed as amended by Schedule 1 to this deed.

- (b) RMS, the Project Trustee and the Asset Trustee agree that, except as expressly amended by this deed:
 - (i) no changes to the Project Deed are to be inferred or implied;
 - (ii) the amendments to the Project Deed do not affect the validity or enforceability of the Project Deed;
 - (iii) except as amended by this deed, all other terms of the Project Deed remain in full force and effect; and
 - (iv) amendments will be made to the O&M Deed in accordance with the O&M Deed Amendment Deed.
- (c) Nothing in this deed:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Project Deed before the Effective Date; or
 - (ii) discharges, releases or otherwise affects any liability or obligation arising under the Project Deed before the Effective Date.

4. **EFFECTIVE DATE**

4.1 **Condition precedent**

Other than this clause 4 and clauses 1 (Interpretation), 5 (Representations and Warranties), and 6 (General) (which clauses are in force in effect as and from the date of this deed), this deed will have no force or effect until the earlier of:

- (a) the D&C Commitment Effective Date; and
- (b) the date RMS notifies the Trustees that the condition precedent in clause 4.1(a) has been unconditionally waived in accordance with clause 4.2(c),

such date being the **Effective Date** RMS must promptly notify the Asset Trustee and the Project Trustee that the D&C Commitment Effective Date has been achieved.

4.2 **Obligation to satisfy condition**

- (a) Each party must use all its reasonable endeavours to ensure that, by the Longstop Date, the condition precedent in clause 4.1(a) has been satisfied.
- (b) Each party must keep the other party informed of any circumstances which may result in the condition precedent in clause 4.1(a) not being satisfied in accordance with its terms.
- (c) The breach or non-fulfilment of the condition precedent in clause 4.1(a) may be unconditionally waived only by the written consent of all parties to this deed.

4.3 **Longstop Date**

- (a) Subject to clause 4.3(b), this deed automatically terminates if the Effective Date has not occurred on or before 11:59pm on the Longstop Date.
- (b) If this deed is terminated pursuant to this clause 4.3:
 - (i) all rights and obligations under this deed, other than:

- (A) this clause 4 and clauses 1 (Interpretation), 5 (Representations and Warranties), and 6 (General);
 - (B) any clause which is expressed to survive termination of this deed; and
 - (C) rights that accrue before termination of this deed,
- terminate and have no further effect; and
- (ii) no party will have any Claim against any other party under or in respect of this deed, including in respect of the reimbursement of costs or expenses in connection with this deed.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

- (a) The Project Trustee and Asset Trustee make the following representations and warranties to each other and to RMS:
 - (i) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this deed and to consummate and perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy; and
 - (iv) in respect of the Project Trustee and Asset Trustee, they own, or have the appropriate rights to, all rights, including Intellectual Property Rights necessary to enable them to comply with the Project Deed as amended and restated with effect from the date of this deed.
- (b) The Project Trustee and Asset Trustee, each in its capacity as trustee of the relevant Trust, make the following representations and warranties to RMS:
 - (i) it is empowered by the relevant Trust Deed:
 - (A) to enter into and perform this deed and to carry on the transactions contemplated by this deed; and
 - (B) to carry on its business as now conducted or contemplated and to own the Trust's assets,

in each case in its capacity as trustee of the relevant Trust;
 - (ii) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the relevant Trust Deed for it to enter into and perform this deed in its capacity as trustee of the relevant Trust;
 - (iii) it is the sole trustee of the relevant Trust; and
 - (iv) it has complied with its obligations and duties under the relevant Trust Deed and at law and no one has alleged that it has not complied.

5.2 **Representations and warranties of RMS**

RMS makes the following representations and warranties to the other parties:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed;
- (c) it is legally entitled and has all statutory power to enter into and perform its obligations under this deed, to carry out the transactions contemplated by those documents, and the entry into this deed is a proper exercise of power;
- (d) its obligations under this deed are valid and binding and are enforceable against it in accordance with the terms of this deed subject to the availability of equitable remedies and, to the extent applicable, laws relating to the enforcement of creditors' rights; and
- (e) the execution, delivery and performance of this deed and the transactions under this deed does not violate any law to which RMS is subject.

6. **GENERAL**

6.1 **Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in New South Wales.
- (b) Each party irrevocably:
 - (i) submits to the jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 6.1(b)(i).

6.2 **Liability for expenses**

- (a) Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.
- (b) All stamp duties (including fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by the relevant party who incurred the stamp duty.

6.3 **Requirement on a person not party to this deed**

If a provision of this deed requires a person that is not a party to this deed to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

6.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law.

6.5 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by Law.

6.6 Amendment

This deed can only be amended or replaced by another document executed by the parties.

6.7 Entire agreement

To the extent permitted by Law, this deed and the other Project Documents:

- (a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and
 - (b) supersede any prior written or other agreement of the parties,
- in relation to the subject matter of this deed.

6.8 Severance

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

- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 6.8(b)(i) preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

6.9 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

Executed as a deed.

THE SEAL of ROADS AND MARITIME SERVICES ABN 76 236 371 088, was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988 (NSW)*:

Name

Signature

EXECUTED by **WCX M4 PT PTY LTD**
(ABN 59 614 741 436) in its personal
capacity and in its capacity as trustee of
the **WCX M4 PROJECT TRUST** (ABN 31
878 147 068) in accordance with section
127(1) of the *Corporations Act 2001 (Cth)*
by:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **WCX M4 AT PTY LTD**
(ABN 61 614 741 445) in its personal
capacity and in its capacity as trustee of
the **WCX M4 ASSET TRUST** (ABN 30 972
117 496) in accordance with section
127(1) of the *Corporations Act 2001 (Cth)*
by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 1

Amendments to the Project Deed

The Project Deed is amended as follows:

1. **RMS' RELATED PARTIES**

1.1 **Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:**

M5 Asset Trustee means WCX M5 AT Pty Ltd (ACN 608 798 081).

M5 Project Trustee means WCX M5 PT Pty Ltd (ACN 608 798 465).

M4-M5 Link Asset Trustee means WCX M4-M5 Link AT Pty Limited (ACN 624 153 742).

M4-M5 Link Project Trustee means WCX M4-M5 Link PT Pty Limited (ACN 624 153 788).

M4-M5 Link WestConnex Concessionaires means the M4-M5 Link Asset Trustee and the M4-M5 Link Project Trustee.

M5 WestConnex Concessionaires means the M5 Asset Trustee and the M5 Project Trustee.

Other WestConnex Concessionaires means either:

- (a) the M5 WestConnex Concessionaires; or
- (b) the M4-M5 Link WestConnex Concessionaires,

or both if the context so requires.

1.2 **Amend the definition of "Related Parties" in clause 1.1 of the Project Deed as follows:**

"Related Parties means:

- (a) in respect of RMS (and subject to clause 1.10), RMS's Representative and any of the respective employees, agents, contractors or officers of RMS and RMS's Representative but excludes:

- (i) the Independent Certifier;
- (ii) the Environmental Representative;
- (iii) the Trustees and their Subcontractors; ~~and~~
- (iv) the Other WestConnex Concessionaires; and

(v)~~(iv)~~ employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to ~~(iii)~~(iv) of this definition; and

- (b) in respect of each Trustee (and subject to clause 1.10), each Trustee's Representative and any of the respective employees, agents, contractors (in their capacity as contractors for the Project) or officers of the Trustees and the relevant Trustee's Representative but excludes:

- (i) the Independent Certifier;

- (ii) the D&C Independent Certifiers;
- (iii) the Environmental Representatives;
- (iv) employees, agents, consultants, contractors (of any tier) and officers of the persons listed in paragraphs (b)(i) to (iii) of this definition;"

2. **STAGE 3 ACCESS**

2.1 **Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:**

Amending Deed means the deed entitled "WestConnex M4 Project Deed Amending Deed" between RMS, the Asset Trustee and the Project Trustee dated on or about 7 June 2018.

M4-M5 Link Maintained Assets has the meaning given in the Road Operators Coordination Agreement.

M4-M5 Link Opening Completion has the meaning given to the term "Opening Completion" in the M4-M5 Link Project Deed.

M4-M5 Link Project Deed means the deed entitled "WestConnex M4-M5 Link Project Deed" between RMS, the M4-M5 Link Project Trustee in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Project Trust, ABN 67 667 191 375, and the M4-M5 Link Asset Trustee in its personal capacity and in its capacity as trustee of the WCX M4-M5 Link Asset Trust, ABN 18 934 919 866, dated on or about the date of the Amending Deed.

M4-M5 Link Project Works has the meaning given to the term "Project Works" in the M4-M5 Link Project Deed.

M4-M5 Link State Works Contractor has the meaning given to the term "State Works Contractor" in the M4-M5 Link Project Deed.

M4-M5 Link Trustees means the M4-M5 Link Asset Trustee and the M4-M5 Link Project Trustee and M4-M5 Link Trustee means either one of them.

New Network Project means a project undertaken by RMS, or its nominee, after the Effective Date to connect any new road or other means of motor vehicle access to:

- (a) the Motorway; or
- (b) the motorway described by WestConnex Program of Works known as 'Stage 3' or 'M4-M5 link'.

[but excludes the motorway described by the WestConnex Program of Works known as 'Stage 3' or 'M4-M5 link'.](#)

2.2 **Amend the definition of "Motorway" in clause 1.1 of the Project Deed as follows:**

Insert the words: "but excludes the M4-M5 Link Maintained Assets," before the words "and to be called the M4 Motorway or such other name as may be determined by RMS."

2.3 **Amend clause 19.2(a)(ii) of the Project Deed as follows:**

"(ii) it is necessary to close the Motorway or a traffic lane of the Motorway as a result of:

- (A) the requirements of any Law or relevant Authority which have the effect of Law and which necessitate the closing of the Motorway or a traffic lane of the Motorway;
- (B) the occurrence of a Force Majeure event which prevents the safe passage of vehicles;
- (C) a material threat to the health or safety of the public;
- (D) maintenance of and/or repairs to the Motorway carried out in accordance with this deed, including the SWTC;
- (E) access by RMS or any person authorised by RMS in accordance with clause 19.15, 22.3, or 22A.13;
- (F) traffic management measures required to respond to congestion or Incidents in the road network surrounding the Motorway in accordance with protocols agreed in writing by the Project Trustee and RMS;
- (G) the Trustees are conducting any work the subject of a Change directed under clause 4A.3(i)(ii); ~~or~~
- (H) the occurrence of a catastrophic structural failing of a structural component of the M4 West Existing Asset which is beyond the reasonable control of the Trustees and their Related Parties and which could not have been wholly Mitigated, prevented, avoided, remedied or overcome by the Trustees or their Related Parties taking those steps which a prudent, experienced and competent concessionaire or operator would have taken ~~or~~ or
- (I) an M4-M5 Link Trustee or the M4-M5 Link State Works Contractor undertaking M4-M5 Link Project Works on the Motorway up to and including the date on which M4-M5 Link Opening Completion occurs, to the extent that such M4-M5 Link Project Works are carried out in accordance with the M4-M5 Link Project Deed."

3. **PLANNING APPROVALS**

3.1 **Amend clause 7.2(b) of the Project Deed as follows:**

"(b) Each Trustee must:

- (i) expeditiously apply for and obtain from each relevant Authority all Approvals required to perform the Project Trustee's Activities or the Asset Trustee's Activities (other than a Primary Planning Approval, the EPBC Act Approval (if any) and the Approvals specified in Part A of Schedule 15);
- (ii) comply with the lawful requirements of each such Authority to permit their proper consideration of the applications for Approvals;
- (iii) comply with, carry out and fulfil all conditions and requirements of all Approvals (including those which RMS is expressed under the terms of the Approval to be required to comply with, carry out and fulfil) to the extent relevant to the Project Trustee's Activities or the Asset Trustee's Activities, subject to the terms of clause 7.2A(a) and Part B of Schedule 15;
- ~~(iv)~~ in respect of any Approval (other than a Pre-Existing Planning Approval that is not the subject of a Pre-Existing Planning Approval Change) relating to

the Project Trustee's Activities or the Asset Trustee's Activities, pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements required by any relevant Authority; ~~and~~

(v) without limiting RMS's obligation to satisfy or fulfil the conditions and requirements of the Planning Approval allocated to RMS under Schedule 15, provide RMS with such assistance as may be reasonably required by RMS to enable RMS to obtain, or satisfy or fulfil the conditions and requirements of, any Approvals which are:

(A) obtained by RMS after the date of this deed; or

(B) as between RMS and the Trustees, required to be satisfied or fulfilled by RMS pursuant to Schedule 15,

provided that:

(C) RMS must reimburse the Trustees for the reasonable costs incurred by the Trustees in providing such assistance to RMS; and

(D) each Trustee's obligations under this clause 7.2(b)(v) will be limited by reference to the rights available to that Trustee under the Project Documents and, without limiting the foregoing, no Trustee will be required to seek any amendment to, or obtain any waiver or consent under, any Project Document in order to comply.

(vi)~~(v)~~ otherwise comply with clause 7.1."

4. CASH MANAGEMENT

4.1 Amend the definition of "Cash Management Deed" in clause 1.1 of the Project Deed as follows:

"**Cash Management Deed** means the deed entitled "WestConnex Cash Management Deed" ~~to be~~ entered into between, amongst others, the Project Trustee, the M5 Project Trustee and the Paying Agent ~~on terms approved by RMS (acting reasonably)~~ dated 30 June 2017."

4.2 Amend the definition of "Cash Management Priority Deed" in clause 1.1 of the Project Deed as follows:

"**Cash Management Priority Deed** means the deed entitled "WestConnex Cash Management Priority Deed" ~~to be~~ entered into between, amongst others, RMS, the Project Trustee, the M5 Project Trustee and the Security Trustee ~~on terms approved by RMS (acting reasonably)~~ dated 30 June 2017."

4.3 Amend the definition of "Paying Agent" in clause 1.1 of the Project Deed as follows:

"**Paying Agent** means ~~the entity to be appointed by the Project Trustee and others under the Cash Management Deed~~ National Australia Bank Limited ABN 12 004 044 937."

5. INTELLECTUAL PROPERTY

5.1 Amend clause 29.1(b) of the Project Deed as follows:

"(b) The Asset Trustee grants to RMS a perpetual, non-exclusive, fully assignable, irrevocable and royalty-free licence to:

- (i) use and reproduce (within the meaning of the *Copyright Act 1968* (Cth)) the Licensed Software; and
- (ii) upon termination or expiry of this deed for any reason, use, reproduce (within the meaning of the *Copyright Act 1968* (Cth)), modify, vary and amend the Licensed Software~~;~~.

for any reason in connection with the Project Works, the operation of the Motorway or the WestConnex Program of Works."

6. **THIRD PARTY CONFIDENTIAL INFORMATION**

6.1 **Insert new definition in clause 1.1 of the Project Deed as follows, in the correct alphabetical order:**

"Third Party Confidential Information means information provided to RMS by any third party and which RMS has given the Trustees prior written notice is confidential."

6.2 **Insert new clause 30.2A in the Project Deed as follows:**

"30.2A Third Party Confidential Information

The Trustees acknowledge and agree that RMS will not disclose (and has no duty to disclose) after the date of the Amending Deed, any Third Party Confidential Information to the Trustees unless the Trustees provide a confidentiality deed in favour of RMS which includes an undertaking from the Trustees not to disclose such Third Party Confidential Information without RMS's prior written consent (which may, at RMS's absolute discretion, include consent to disclose such information to the Trustees' Subcontractors provided that such disclosure is in accordance with any terms RMS is required to comply with in respect of that Third Party Confidential Information)."

6.3 **Amend paragraph 20 of Schedule 3 as follows:**

"20. Information identified as Commercially Sensitive Information in Schedule 3 of the M4 East D&C Deed and the O&M Deed."

7. **CHANGE SAVINGS**

7.1 **Amend clause 14.3(b) of the Project Deed as follows:**

(b) If a Change directed by RMS under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure results in Change Savings (or in the case of a Change directed by RMS under section 2 of the Change Procedure, is expected to result in Change Savings, as advised by a Trustee under section 2.2(a)(iii) of the Change Procedure), RMS and the Trustees agree that:

- (i) in the case of a Change directed by RMS under clause 14.1(a), clause 14.2(e) or section 1 of the Change Procedure, RMS is entitled to receive 100% of the Change Savings; and
- (i) in the case of a Change directed by RMS under section 2.3 of the Change Procedure, RMS is entitled to receive ~~25~~50% of the greater of:
 - (A) the actual Change Savings; and
 - (B) the estimated Change Savings (as advised by the a Trustee under section 2.2(a)(iii) of the Change Procedure).

8. **NOT USED**

9. **WESTCONNEX INTEGRATION**

9.1 **Insert the following new definitions in clause 1.1 of the Project Deed, in the correct alphabetical order:**

Actionable IO Event of Default means any IO Event of Default in respect of which, an expert appointed under section 1.4 of Schedule 2 (*Integrated Operation and Fault Attribution*) of the Road Operators Coordination Agreement has issued a notice under section 1.4(c)(vi) (*Fault attribution*) of Schedule 2 (*Integrated Operation and Fault Attribution*) of the Road Operators Coordination Agreement confirming that the IO Event of Default was caused by a Fault Event (as that term is defined in the Road Operators Coordination Agreement) attributable to either or both Trustees.

Integrated Operations Activities means all things or tasks which WCX OpCo is, or may be, required to do under the Integrated Operations Deed.

Integrated Operations Deed means the deed titled "WestConnex Integrated Operations Deed" dated on or about the date of this deed between the M4-M5 Link Project Trustee, the Project Trustee, the M5 Project Trustee and WCX OpCo.

IO Enquiry Notice has the meaning given to that term in clause 31.2A(b).

IO Event of Default means an Event of Default which is caused by the Integrated Operations Activities.

IO Services Provider means Fulton Hogan Egis O&M Pty Limited (ACN 609 764 730) or such other entity appointed by the Project Trustee, M5 Project Trustee and M4-M5 Link Project Trustee as the entity that performs the Integrated Operations Activities pursuant to the IO Services Provider Deed.

IO Services Provider Deed means the deed titled "WestConnex Integrated Operations Services Provider Deed" to be entered into on or about the date of this deed between WCX OpCo and the IO Services Provider pursuant to which the IO Services Provider will perform the Integrated Operations Activities.

Relevant Event of Default has the meaning given to that term in clause 31.2A(a).

Termination Step has the meaning given to that term in clause 31.2A(a).

Unauthorised Closure Default has the meaning given to that term in clause 31.1(c).

WCX OpCo has the meaning given to it under the Road Operators Coordination Agreement.

9.2 **Delete the definition of "Road Operators Coordination Agreement" in clause 1.1 of the Project Deed and replace it with the following:**

"Road Operators Coordination Agreement means the deed titled "WestConnex Road Operators Coordination Agreement" entered into between the Project Trustee, the Asset Trustee, the M5 Project Trustee, the M5 Asset Trustee, the M4-M5 Link Project Trustee, the M4-M5 Link Asset Trustee, WCX OpCo and RMS on or about the date of the M4-M5 Link Project Deed."

9.3 **Delete clauses 19.17(a)-(d) and insert new clauses 19.17(a) and 19.17(b) of the Project Deed as follows:**

- "(a) The parties acknowledge that the M4-M5 Link Project Trustee, the Project Trustee and the M5 Project Trustee have or will engage WCX OpCo to perform the Integrated Operations Activities in accordance with the Integrated Operations Deed.
- (b) The parties acknowledge that WCX OpCo has engaged or will engage the IO Services Provider to perform the Integrated Operations Activities in accordance with the IO Services Provider Deed."

9.4 **Amend clause 31.2(a) of the Project Deed as follows:**

- "(a) Subject to clause 31.2(aa), uUpon the occurrence of an Event of Default, RMS may, by notice to both Trustees, require a Trustee to Remedy the Event of Default within such period (subject to clause 31.2(b)) specified in the notice as is in the opinion of RMS (acting reasonably) required to Remedy the Event of Default (the **Remedy Period**)."

9.5 **Insert the following new clause 31.2(aa) immediately following clause 31.2(a) of the Project Deed:**

- "(aa) RMS agrees that its rights to issue a notice under clause 31.2(a) are subject to the terms of clause 31.2A."

9.6 **Insert the following new clauses 31.2A and 31.2B immediately following clause 31.2 of the Project Deed:**

"31.2A **RMS entitlement to issue notice of default**

- (a) Notwithstanding that an Event of Default may have occurred under any of clauses 31.1(c), 31.1(d) or 31.1(e) (for the purposes of this clause 31.2A, a **Relevant Event of Default**), if an Unauthorised Closure Default is subsisting, RMS may not take any step towards the termination of this deed for a Relevant Event of Default which is caused by the events, facts or circumstances which gave rise to that subsisting Unauthorised Closure Default (including, without limitation, the service of any notice under clause 31.2(a)) (each being, for the purposes of this clause 31.2A, a **Termination Step**) unless RMS:
 - (i) has served a notice under clause 31.2A(b); and
 - (ii) is subsequently entitled to take Termination Steps pursuant to clause 31.2A(e).
- (b) At any time while a Relevant Event of Default is subsisting (and provided that an Unauthorised Closure Default is also subsisting), RMS may issue a notice (an **IO Enquiry Notice**) to the Project Trustee which:
 - (i) describes the Relevant Event of Default; and
 - (ii) requires the Project Trustee to confirm whether or not the Relevant Event of Default is an IO Event of Default.
- (c) The Project Trustee must, as soon as reasonably practicable, and by no later than the date falling 2 Business Days after the date on which it receives an IO Enquiry Notice, provide notice to RMS:

- (i) confirming whether (acting reasonably and in good faith) it is of the view that the Relevant Event of Default is an IO Event of Default; and
 - (ii) providing details which are reasonable in the circumstances (taking into account the timeframe in which such information is required to be provided under this clause) of the steps taken, and information relied upon, by the Project Trustee in forming that view, including copies of any notices provided or received by the Project Trustee under section 1.3 of Schedule 2 of the Road Operators Coordination Agreement.
- (d) If the Project Trustee confirms in a notice to RMS issued under clause 31.2A(c) that it is of the view that a Relevant Event of Default is an IO Event of Default then RMS must not take any Termination Step for that Relevant Event of Default (on the basis of an Event of Default subsisting under clause 31.1(c), clause 31.1(d) or clause 31.1(e)) unless and until:
- (i) it is established in accordance with the terms of the Road Operators Coordination Agreement that the relevant IO Event of Default is an Actionable IO Event of Default;
 - (ii) a further Event of Default subsequently arises as a result of non-compliance by either Trustee with the requirements of clause 31.2B and such Termination Steps are available under this deed with respect to that Event of Default; or
 - (iii) the Trustees fail to comply with their obligations under clause 8.2(a) and Schedule 2 of the Road Operators Coordination Agreement with respect to that IO Event of Default.
- (e) If RMS issues an IO Enquiry Notice and:
- (i) the Project Trustee confirms to RMS in accordance with clause 31.2A(c) that the Relevant Event of Default referred to in the relevant IO Enquiry Notice is not an IO Event of Default;
 - (ii) the Project Trustee fails to respond to an IO Enquiry Notice within the period referred to in clause 31.2A(c) confirming whether or not the Relevant Event of Default referred to in the relevant IO Enquiry Notice is an IO Event of Default; or
 - (iii) it is entitled to do so under clause 31.2A(d),

then, provided the relevant Unauthorised Closure Default is still subsisting, RMS will be entitled to take Termination Steps in respect of the Relevant Event of Default in accordance with this deed.

31.2B **Duty to mitigate effects of and remedy an IO Event of Default**

Upon the occurrence of any IO Event of Default (and while it is subsisting), the Project Trustee must:

- (a) immediately take such steps as are reasonable in the circumstances to Mitigate the effects of; and
 - (b) to the extent reasonably practicable, promptly remedy,
- that IO Event of Default."

10. **PRINCIPAL CONTRACTOR**

10.1 **Amend the definition of "WHS Legislation" in clause 1.1 of the Project Deed as follows:**

"WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Asset Trustee's Activities or the Project Trustee's Activities, the Project Works or the Temporary Works."

10.2 **Amend clause 9.7(a) of the Project Deed as follows:**

"(a) In this clause 9.7 and clauses 9.7A, 9.7B, 9.8 and 9.8A, the terms "relevant entity", "principal contractor", "workplace", "construction project" and "construction work" have the same meaning as assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, the Project Works and the Temporary Works are taken to be part of the same "construction project".

10.3 **Delete clause 9.7A of the Project Deed in its entirety and replace with the following:**

"9.7A **Principal contractor (O&M Work)**

- (a) For the purposes of the WHS Legislation and this deed:
 - (i) the construction work comprising the O&M Work is taken to be part of the same "construction project"; and
 - (ii) the Asset Renewal does not form part of the "construction project" referred to in clause 9.7A(a)(i).
- (b) The parties acknowledge and agree that the Project Trustee is commissioning the construction project that comprises the O&M Work for the purposes of clause 293 of the *Work Health and Safety Regulation 2017* (NSW).
- (c) The Project Trustee acknowledges that, if the Project Trustee does not engage another person as principal contractor for the O&M Work and authorise that person to have management and control of the workplace under clause 293(2) of the *Work Health and Safety Regulation 2017* (NSW) (or any such purported engagement is ineffective for any reason), the Project Trustee will be the principal contractor for the O&M Work and must discharge the duties of a principal contractor in relation to the O&M Work.
- (d) The Project Trustee must, within 10 Business Days after engaging another person as principal contractor for the O&M Work, notify RMS of the person appointed as principal contractor and, if requested by RMS, the terms of that appointment.
- (e) The parties acknowledge that, at the date of the Amending Deed, the Project Trustee has engaged the Operator as principal contractor for the O&M Work in accordance with clause 9.7 of the O&M Deed.

10.4 **Insert the following new clause 9.7B immediately after clause 9.7A of the Project Deed:**

"9.7B **Principal contractor (Asset Renewal)**

- (a) For the purposes of the WHS Legislation and this deed:

- (i) the construction work comprising the Asset Renewal is taken to be part of the same "construction project"; and
 - (ii) the O&M Work does not form part of the "construction project" referred to in clause 9.7B(a)(i).
- (b) The parties acknowledge and agree that the Asset Trustee is commissioning the construction project that comprises the Asset Renewal for the purposes of clause 293 of the *Work Health and Safety Regulation 2017* (NSW).
 - (c) The Asset Trustee acknowledges that, if the Asset Trustee does not engage another person as principal contractor for the Asset Renewal and authorise that person to have management and control of the workplace under clause 293(2) of the *Work Health and Safety Regulation 2017* (NSW) (or any such purported engagement is ineffective for any reason), the Asset Trustee will be the principal contractor for the Asset Renewal and must discharge the duties of a principal contractor in relation to the Asset Renewal.
 - (d) The Asset Trustee must, within 10 Business Days after engaging another person as principal contractor for the Asset Renewal, notify RMS of the person appointed as principal contractor and, if requested by RMS, the terms of that appointment."

11. COMMUNICATIONS

11.1 Delete section 4.6 of Part C of Schedule 56, Appendix D.2 and replace with the following:

"4.6 Project Website

- (a) The Asset Trustee will maintain and operate the existing project website to assist in disseminating community information, receiving feedback and providing generic responses to common enquiries.
- (b) The Asset Trustee must not maintain or operate any other website accessible to the public relating to the Project.
- (c) All material for the website must comply with requirements of the WC3 Web Content Accessibility Guidelines (WCAG) 2.0 Level AA. Documents must be optimised for the web and supplied in both Word 2003.doc and PDF format. The Asset Trustee must utilise the following RMS accessibility checklists, contained within Project Communication Templates, to ensure content compliance:
 - (i) accessibility checklist for content;
 - (ii) accessibility checklist for Word 2003 documents; and
 - (iii) accessibility checklist for PDF documents.
- (d) The Asset Trustee must provide the following information for the project website:
 - (i) the information required by condition TC80 of the Tender Baseline Conditions of Approval;
 - (ii) background information on the Project Works;
 - (iii) a description of the various approval authorities and their areas of authority;

- (iv) a monthly photo gallery containing images of current and recent construction, community and environmental management activities associated with the Asset Trustee's Activities;
- (v) current and past display information, community updates, advertisements, and other publications;
- (vi) PDFs of reports that are relevant to the Asset Trustee's Activities , including documents on environmental investigations;
- (vii) information for the driving community, including road transport operators and public transport operators and users, which includes predicted periods of delay and alternative routes. This information must be updated weekly or more often when traffic conditions change;
- (viii) a document of frequently asked questions and responses;
- (ix) the Asset Trustee's 24 hour staffed telephone service number;
- (x) the Asset Trustee's email address;
- (xi) the Asset Trustee's postal address;
- (xii) any other relevant items or information of interest; and
- (xiii) a means of allowing people to apply to be included on the community contacts database register."

12. **DEFAULT AND TERMINATION**

12.1 **Amend clause 31.1(e) of the Project Deed as follows:**

- "(e) any member of the Group defaults in a material respect in the due observance and performance of any of its other obligations under this deed or any other RMS Project Document, excluding any failure by the Trustees to comply with any obligation under the Road Operators Coordination Agreement, other than an obligation under:
- (i) clause 3 (Cooperation and Coordination) of the Road Operators Coordination Agreement to the extent that obligation is owed to RMS;
 - (ii) clause 15(c)(ii) (Future WestConnex Concessionaires) of the Road Operators Coordination Agreement; and
 - (iii) clause 16.9 (Further Assurances) of the Road Operators Coordination Agreement;"

13. **NOTIFICATION OF CLAIMS**

13.1 **Amend clause 39.1(a) of the Project Deed as follows:**

- "(a) If a Trustee believes that any Direction of RMS's Representative (including the issuing of a Change Order (as that term is defined under each of the M4-M5 Link Project Deed and the M5 Project Deed) under the M4-M5 Link Project Deed or the M5 Project Deed), other than the issuing of a Change Order under this deed, constitutes or involves a Change under this deed it must, if it wishes to make a Claim against RMS arising out of, or in any way in connection with, the Direction:"