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WestConnex M5 O&M Deed  
Third Deed for Contract Amendment

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## DATE

## PARTIES

**WCX M5 PT Pty Limited** (ACN 608 798 465) in its personal capacity and in its capacity as trustee of the WCX M5 Project Trust (ABN 73 899 615 977) (the **Project Trustee**)

**Fulton Hogan Egis O&M Pty Limited** ABN 37 609 764 730 (the **O&M Contractor**)

## RECITALS

- A The Project Trustee and the O&M Contractor are parties to the Contract.
- B The Project Trustee and the O&M Contractor agree to amend the Contract as provided for in this deed.

## TERMS

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this deed and recitals:

- (a) **Contract** means the document titled "WestConnex New M5 O&M Deed" originally dated 17 December 2015 between the Project Trustee and the O&M Contractor as amended by the "WestConnex M5 O&M Deed Amendment Deed" dated 12 June 2018 between the Project Trustee and the O&M Contractor and the "WestConnex M5 O&M Deed – Deed for Contract Amendment" dated 18 December 2019 between the Project Trustee and the O&M Contractor;
- (b) **Effective Date** means the date of this deed.

#### 1.2 Interpretation

In this deed, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) headings are for convenience only and do not affect the interpretation of this deed;
- (d) references to this deed and any deed, agreement or instrument are deemed to include references to this deed or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the deed or any part; and
- (f) a reference to "\$" is to Australian currency.

### 2 Amendment to the Contract

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The parties acknowledge and agree that, on and from the Effective Date, the Contract is amended as described in Schedule 1 to this deed.

### **3 General**

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#### **3.1 Governing law**

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

#### **3.2 Execution**

This deed may be executed in a number of counterparts, all of which, when taken together, will constitute one and the same instrument.

**Executed as a deed.**

**PROJECT TRUSTEE**

Executed by the Project Trustee in accordance with section 127 of the *Corporations Act 2001* (Cth):

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Signature of director

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Signature of company secretary/director

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Full name of director

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Full name of company secretary/director

**O&M CONTRACTOR**

Executed by the O&M Contractor in accordance with section 127 of the *Corporations Act 2001* (Cth):

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Signature of director

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Full name of director

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Signature of company secretary/director

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Full name of company secretary/director

## Schedule 1 - Amendments to Contract

For the purposes of clause 2 of this deed, the amendments to the Contract set out in the table below are made with effect from the Effective Date.

Item	Contract clause reference	Amendment to the Contract
1.	1.1	<p>The following new definitions are inserted into clause 1.1 of the Contract in alphabetical order:</p> <p><b>Date for Early Transition</b> means 1 May 2020, or such other date as may be agreed by the parties in writing.</p> <p><b>Heavy Towing Services</b> means the provision of 1 incident response vehicle, which is capable of towing disabled fully laden B double vehicles, on the M5 East Motorway on weekdays (excluding public holidays) from 5am to 10am and from 3pm to 8pm.</p> <p><b>M5E Transition Phase</b> means the period commencing on the Date for Early Transition and ending on the M5E Transfer Date.</p> <p><b>M5E Transition Phase Services</b> means the services set out in clause 19.16.</p> <p><b>M5E Transition Phase Services Fee</b> has the meaning given in Schedule 42.</p> <p>The following existing definitions are deleted and replaced with the following definitions in clause 1.1 of the Contract:</p> <p><b>Core Services</b> means all O&amp;M Services which are not Reimbursable Services, Additional Services or M5E Transition Phase Services.</p> <p><b>Force Majeure</b> means:</p> <p>(a) prior to the Date of Opening Completion:</p> <ul style="list-style-type: none"> <li>(i) earthquake, cyclone, fire, explosion, flood;</li> <li>(ii) malicious damage, sabotage, act of a public enemy, terrorism or civil unrest taking place in Australia;</li> <li>(iii) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;</li> <li>(iv) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia; or</li> <li>(v) confiscation, nationalisation, requisition or property damage under the order of any government taking place in Australia;</li> </ul> <p>(b) during the M5E Transition Phase, in relation to the M5 East Motorway or the M5E Transition Phase Services, in addition to the events referred to in paragraphs (a)(i) to (v) of this definition, the occurrence of any other event other than:</p> <ul style="list-style-type: none"> <li>(i) a breach of a O&amp;M Document by the O&amp;M Contractor or any other event arising directly as a consequence of a breach of a O&amp;M Document by the O&amp;M Contractor; or</li> <li>(ii) an event the risk of which is specifically allocated under a O&amp;M Document; or</li> </ul>

Item	Contract clause reference	Amendment to the Contract
		<p>(c) on or after the Date of Opening Completion:</p> <p>(i) the events referred to in paragraphs (a)(i) to (v) of this definition; or</p> <p>(ii) the occurrence of any other event other than:</p> <p>(A) a breach of a O&amp;M Document by the O&amp;M Contractor or any other event arising directly as a consequence of a breach of a O&amp;M Document by the O&amp;M Contractor; or</p> <p>(B) an event the risk of which is specifically allocated under a O&amp;M Document,</p> <p>which is beyond the reasonable control of the parties and their Related Parties and which is an event which, or an event the effects of which both:</p> <p>(d) prevents or delays the O&amp;M Contractor from performing an obligation under the O&amp;M Documents; and</p> <p>(e) could not have been wholly Mitigated, prevented, avoided, remedied or overcome by the O&amp;M Contractor or its Related Parties taking those steps which a prudent, experienced and competent maintenance contractor would have taken.</p> <p><b>KPI or Key Performance Indicator</b> means the measure of the O&amp;M Contractor's standard of performance of the O&amp;M Services (other than the M5E Transition Phase Services), set out in Schedule 45.</p> <p><b>O&amp;M Services or O&amp;M</b> means all things and tasks which the O&amp;M Contractor does, is, or may be, required to carry out or do to comply with its obligations under the O&amp;M Documents, including:</p> <p>(a) Core Services (excluding the Operation Services);</p> <p>(b) Reimbursable Services;</p> <p>(c) Additional Services; and</p> <p>(d) other than for the purposes of clause 6.4, 19.3, 19.22, 21.2(a)(ii), Schedule 41, Schedule 45 and Schedule 46, M5E Transition Phase Services.</p> <p><b>O&amp;M Service Fee</b> means the service payment payable to the O&amp;M Contractor for the performance of the O&amp;M Services (other than the M5E Transition Phase Services), calculated in accordance with Schedule 41 and adjusted in accordance with this deed.</p>
2.	3.1(b)(i)	<p>Clause 3.1(b)(i) of the Contract is deleted and replaced with the following clause:</p> <p>(i) any right to payment that the O&amp;M Contractor may have under this deed of the O&amp;M Service Fee or the M5E Transition Phase Services Fee;</p>

Item	Contract clause reference	Amendment to the Contract
3.	9.1(b)(ii)(A)	<p>Clause 9.1(b)(ii)(A) of the Contract is deleted and replaced with the following clause:</p> <p style="padding-left: 40px;">(A) the performance or non performance of the O&amp;M Services does not cause or contribute to any failure of the Motorway (including, during the M5E Transition Phase, the M5 East Motorway) to remain fit for its intended purposes; and</p>
4.	9.1(d)	<p>Clause 9.1(d) of the Contract is deleted and replaced with the following clause:</p> <p style="padding-left: 40px;">(d) in carrying out the O&amp;M Services, unless otherwise expressly permitted by this deed, the O&amp;M Contractor must:</p> <p style="padding-left: 80px;">(i) not impede the Project Trustee or its Related Parties in the operation of the Motorway (including, during the M5E Transition Phase, the M5 East Motorway); and</p> <p style="padding-left: 80px;">(ii) unless otherwise expressly permitted by this deed, keep all traffic lanes of the Motorway (including, during the M5E Transition Phase, the M5 East Motorway) open to the public for the safe, efficient and continuous passage of vehicles at all times from the Date for Early Transition until the end of the Term.</p>
5.	11.1(a)(i)	<p>Clause 11.1(a)(i) of the Contract is deleted and replaced with the following clause:</p> <p style="padding-left: 40px;">(i) on and from the Date for Early Transition, continue to allow, or ensure that the O&amp;M Contractor and its Related Parties and invitees continue to be allowed, access to each such area of the Maintenance Site as is necessary for the proper performance of the O&amp;M Services; and</p>



Item	Contract clause reference	Amendment to the Contract
6.	19.2A	<p>Clause 19.2A of the Contract is deleted and replaced with the following clause:</p> <p>(a) The O&amp;M Contractor acknowledges and agrees that:</p> <p>(i) RMS entered into the Existing M5 East O&amp;M Contract pursuant to which the Existing M5 East Operator was required to operate and maintain the M5 East Motorway until the M5E Transfer Date. Pursuant to this deed, the O&amp;M Contractor will provide the M5E Transition Phase Services during the M5E Transition Phase, therefore the Existing M5 East Operator will operate and maintain the M5 East Motorway until the Date for Early Transition rather than the M5E Transfer Date; and</p> <p>(ii) the Existing M5 East Operator will perform certain obligations pursuant to clause 44 of the Existing M5 East O&amp;M Contract prior to the Date for Early Transition to handover the operation and maintenance of the M5 East Motorway (the <b>Existing M5 East Handover Services</b>).</p> <p>(b) The O&amp;M Contractor must liaise and co-ordinate with the Existing M5 East Operator prior to the Date for Early Transition to ensure the transition of the maintenance of the M5 East Motorway from the Existing M5 East Operator to the O&amp;M Contractor on the Date for Early Transition in an orderly manner, including by taking full advantage of the Existing M5 East Handover Services.</p>
7.	19.4(f)(i)(B)	<p>Clause 19.4(f)(i)(B) of the Contract is deleted and replaced with the following clause:</p> <p>(B) the Date for Early Transition, the O&amp;M Services Documents in respect of the M5 East Motorway,</p>
8.	19.4(f)(ii)	<p>Clause 19.4(f)(ii) of the Contract is deleted and replaced with the following clause:</p> <p>(ii) compliance with the O&amp;M Services Documents will enable it, during the Term (and, with respect to the M5 East Motorway, during the M5E Transition Phase) to fulfil its obligations under this deed.</p>

Item	Contract clause reference	Amendment to the Contract
9.	19.5(a)	<p>Clause 19.5(a) of the Contract is deleted and replaced with the following clause:</p> <p>(a) If, other than to the extent permitted or excused pursuant to this deed:</p> <ul style="list-style-type: none"> <li>(i) the O&amp;M Services Documents have not been maintained or complied with, as required by this deed;</li> <li>(ii) the O&amp;M Services Documents are deficient as a mechanism for ensuring that at the end of the Term the Motorway will be in the handover condition required by the terms of this deed; or</li> <li>(iii) the O&amp;M Contractor otherwise fails to comply with its obligations under clauses 19.1 or 19B,</li> </ul> <p>the Project Trustee may, at any time during the Term (and, with respect to the M5 East Motorway, during the M5E Transition Phase), issue to the O&amp;M Contractor a notice requiring the O&amp;M Contractor to rectify any specified non-conformances within 30 days.</p>
10.	19.6	<p>The preamble to clause 19.6 of the Contract is deleted and replaced with the following clause:</p> <p>Prior to the Date for Early Transition, the Project Trustee must do all things reasonably required by the O&amp;M Contractor to ensure the smooth and orderly transmission of responsibility for the maintenance and repair of the M5 East Motorway, including:</p>
11.	19.16	<p>Clause 19.16 of the Contract is deleted and replaced with the form of clause 19.16 set out in Schedule 2 to this deed.</p>
12.	19B(a)(i)	<p>Clause 19B(a)(i) of the Contract is deleted and replaced with the following clause:</p> <ul style="list-style-type: none"> <li>(i) maintain the Motorway (including, during the M5E Transition Phase, the M5 East Motorway) so that, to the extent applicable to the performance or non-performance of the O&amp;M Services, the performance of the Motorway (including, during the M5E Transition Phase, the M5 East Motorway) meets the performance standards specified in Part A of the SWTC and Part B of the SWTC; and</li> </ul>
13.	19B(a)(ii)	<p>Clause 19B(a)(ii) of the Contract is deleted and replaced with the following clause:</p> <ul style="list-style-type: none"> <li>(ii) where the O&amp;M Contractor is required to carry out any repair, Replacement or Refurbishment of any Asset or component of the Motorway (including, during the M5E Transition Phase, the M5 East Motorway), carry out that repair, Replacement or Refurbishment:</li> </ul>

Item	Contract clause reference	Amendment to the Contract
14.	25.2(d)	<p>Clause 25.2(d) of the Contract is deleted and replaced with the following clause:</p> <p>(d) The Change Costs for a Change in Law will be reimbursed by way of an adjustment to:</p> <p>(i) the M5E Transition Phase Services Fee, to the extent the Change in Law occurs before or during the M5E Transition Phase; and</p> <p>(ii) the Core Services Fee. If the Change in Law occurs before the Date of Opening Completion of New M5 the Core Services Fee will not be adjusted until the Date of Opening Completion of New M5. Any Change Costs incurred before that time and which are not compensated pursuant to clause 25.2(d)(i) will be accounted for in the adjustment at that point and will be amortised across the remainder of the Term.</p>
15.	31.2(e)(ii)	<p>Clause 31.2(e)(ii) of the Contract is deleted and replaced with the following clause:</p> <p>(ii) if the Event of Default the subject of the Remedy Notice:</p> <p>(A) occurred after the Date of Opening Completion of New M5, the Motorway is open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 19.2 of this deed); or</p> <p>(B) occurred in relation to the M5 East Motorway during the M5E Transition Phase and the M5 East Motorway is open to the public to the extent that it is safe to do so (unless permitted otherwise in accordance with clause 19.16 of this deed),</p>
16.	Schedule 3	<p>A new section 9 is inserted into Schedule 3 of the Contract as follows:</p> <p>9. M5E Transition Phase Services Fee.</p>
17.	Schedule 41, Part A, new section 1(m)	<p>A new section 1(m) is inserted into Part A of Schedule 41 of the Contract as follows:</p> <p>(m) The parties acknowledge and agree that, as at the date of the deed of amendment titled "WestConnex M5 O&amp;M Deed Third Deed for Contract Amendment", the fees in Table A.1 in Part A of this schedule incorporate the reduction schedule as part of Change Order WCXSTAG2-WCX-FHEOM-NOT-CON-000007 dated 18 December 2019.</p>
18.	Schedule 41 section 4 preamble	<p>The reference to "The O&amp;M Services Fee" at the preamble to section 4 of Schedule 41 is deleted and replaced with "Subject to clause 19.16(r) of this deed, the O&amp;M Service Fee"</p>

Item	Contract clause reference	Amendment to the Contract
19.	Schedule 41 section 4	<p>The definition of “CSF<sub>m</sub>” is deleted and replaced with:</p> <p>CSF<sub>m</sub> = Core Services Fee for the relevant Month, as set out in column (a) of Table A.1 in Part A of this schedule</p>
20.	Schedule 41 Part A section 1(a)	<p>Section 1(a) of Part A of Schedule 41 is deleted and replaced with the following:</p> <p>Subject to the remainder of this section A.1 and clause 19.16(r) of this deed, the Core Services Fee for each Month during the Term is set out in column (a) in Table A.1 below.</p>
21.	Schedule 41 Part A section 1(e)	<p>Section 1(e) of Part A of Schedule 41 is deleted and replaced with the following:</p> <p>(e) The Project Trustee and the O&amp;M Contractor acknowledge and agree that the Core Services Fee, at the time the parties entered into this Deed, was agreed by the parties based on:</p> <ul style="list-style-type: none"> <li>(i) an expected Date of Opening Completion for the New M5 Main Works of 20 December 2019; and</li> <li>(ii) a planned ramp up commencement month of June 2019 (Planned Ramp Up Commencement Month) during which time the O&amp;M Contractor will increase its resourcing in anticipation of performing the O&amp;M Services during the Operations Phase (Ramp Up Activities),</li> </ul> <p>which resulted in a payment amount for each Month, and overall payment profile, as set out in the original Table A.1 and Tables D.0 to D.10 (inclusive) in this Schedule 41 (at the time the parties entered into this Deed) (<b>Tables</b>). The Project Trustee and the O&amp;M Contractor will monitor the expected Date of Opening Completion for New M5 Main Works and the impact of that expected Date of Opening Completion for New M5 Main Works on the Planned Ramp Up Commencement Month.</p>

Item	Contract clause reference	Amendment to the Contract
22.	Schedule 41 Part A section 1(i)	<p>Section 1(i) of Part A of Schedule 41 is deleted and replaced with the following:</p> <p>(i) If the Project Trustee gives a Delay Notice to the O&amp;M Contractor under section 1(h) of Part A of this Schedule 41, then the payment amount for each Month set out in the Tables will be adjusted as follows:</p> <p>(i) the increases in the Core Services Fee shown in:</p> <p>(A) column (c) of Table A.1 in Part A of this Schedule 41; and</p> <p>(B) the other Tables,</p> <p>shall be deferred by a period equal to the delay advised in the Delay Notice;</p> <p>(ii) until the deferred increase of the fees in accordance with section 1(i)(i) of Part A of this Schedule 41, the amount of the Core Services Fee shall be an amount as is reasonable to reflect the O&amp;M Contractor's revised costs due to the deferral of the Ramp-Up Activities (which the O&amp;M Contractor must seek to mitigate and minimise), but without exceeding the amount of the Core Services Fee in the same Month that the Delay Notice was given in;</p> <p>(iii) there will be no changes to the fees shown in column (b) of Table A.1 in Part A of this Schedule 41;</p> <p>(iv) the fees shown in column (a) of Table A.1 in Part A of this Schedule 41 will be adjusted so that they are, in respect of each row of the table, equal to the sum of the fees shown in that row in column (b) and the updated column (c) of Table A.1; and</p> <p>(v) any amounts in Table A.1 in Part A of this Schedule 41 that are deferred in accordance with section 1(i)(i) of Part A of this Schedule 41 beyond Month 12 of Year 10 shall be removed from Table A.1 (and for the avoidance of doubt, the O&amp;M Contractor shall not be entitled to payment of such amounts).</p>
23.	Schedule 41 Table A.1	Table A.1 in Schedule 41 to the Contract is deleted and replaced with the form of Table A.1 set out in Schedule 4 to this deed.
24.	Schedule 42	Schedule 42 to the Contract is deleted and replaced with the form of Schedule 42 set out in Schedule 3 to this deed.

Item	Contract clause reference	Amendment to the Contract
25.	Schedule 43 section 2(a3)	<p>Section 2(a3) of Schedule 43 is deleted and replaced with the following:</p> <p>(a3) in respect of the insurances in sections 2(d) and 2(e), from the earlier of the:</p> <ul style="list-style-type: none"> <li>(i) date which is 3 months prior to the Date of Opening Completion of the New M5; and</li> <li>(ii) Date for Early Transition,</li> </ul> <p>until the end of the Term,</p>
26.	Schedule 43 section 2 postamble	<p>The reference to “Motorway” at the post amble to section 2 of Schedule 43 is deleted and replaced with the following:</p> <p>Motorway (including, during the M5E Transition Phase, the M5 East Motorway)</p>
27.	Schedule 43 section 2(b) post amble	<p>The reference to “Motorway” at the post amble to section 2(b) of Schedule 43 is deleted and replaced with the following:</p> <p>Motorway (including, during the M5E Transition Phase, the M5 East Motorway)</p>
28.	Schedule 43 section 3(b)(iii)	<p>The reference to “Motorway” at section 3(b)(iii) of Schedule 43 is deleted and replaced with the following:</p> <p>Motorway (including, during the M5E Transition Phase, the M5 East Motorway)</p>

## Schedule 2 - Transition Phase Services

For the purposes of Item 11 in Schedule 1 to this deed, clause 19.16 of the Contract is deleted and replaced with the following clause:

### 19.16 M5E Transition Phase Services

The parties acknowledge and agree that this clause 19.16 is effective only for the duration of the M5E Transition Phase, and does not otherwise prejudice or adversely affect any right, power, authority, discretion or remedy or discharge, release or otherwise affect any liability or obligation arising under clause 19 during the Term.

- (a) **(Obligation to keep the M5 East Motorway Open):** The O&M Contractor must maintain and repair the M5 East Motorway during the M5E Transition Phase so that all traffic lanes of the M5 East Motorway (including all on-ramps, off-ramps, exits and entries) are at all relevant times during the M5E Transition Phase open to the public for the safe, efficient and continuous passage of vehicles except to the extent:
- (i) it has been authorised to close the M5 East Motorway or a traffic lane of the M5 East Motorway under a road occupancy licence granted by the Transport for NSW Transport Management Centre in accordance with the SWTC or RMS otherwise consents in writing;
  - (ii) it is necessary to close the M5 East Motorway or a traffic lane of the M5 East 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 M5 East Motorway or a traffic lane of the M5 East 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 M5 East Motorway carried out in accordance with this deed, including the SWTC;
    - (E) access by the Project Trustee, RMS or any person authorised by RMS in accordance with clause 22.3;
    - (F) traffic management measures required to respond to congestion or Incidents in the road network surrounding the M5 East Motorway in accordance with protocols agreed in writing by the Project Trustee and the O&M Contractor; or
    - (G) either RMS or Project Trustee exercising a right to close the M5 East Motorway under a Project Document.
- (b) If during the M5E Transition Phase the O&M Contractor closes or proposes to close any part of the M5 East Motorway for any reason whatsoever, the O&M Contractor must promptly notify the Project Trustee in writing specifying the reasons for such closure.
- (c) The O&M Contractor must, at its own cost (subject to clause 19.16(l)), carry out all work necessary or desirable to enable the obligations specified in this clause 19.16 to be fulfilled.
- (d) **(Performance of the M5E Transition Phase Services):** Without limiting clause 19.16(a), in performing the M5E Transition Phase Services the O&M Contractor must:

- (i) comply with O&M Best Practices;
  - (ii) keep the M5 East Motorway and any maintenance plant clean and tidy and regularly remove from any place where the M5E Transition Phase Services are being performed any waste or surplus material arising from such performance;
  - (iii) act in a timely and expeditious manner;
  - (iv) once it has commenced M5E Transition Phase Services, proceed with the M5E Transition Phase Services with due expedition and without delay and must take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other M5E Transition Phase Services) to minimise any disruption to, or compromise of the safety of, the users of the M5 East Motorway;
  - (v) minimise the impact of the performance of the M5E Transition Phase Services on motorists and other users of the M5 East Motorway;
  - (vi) perform the M5E Transition Phase Services using good workmanship and materials which are fit for their intended purposes;
  - (vii) subject to clause 19B, if, in the performance of the M5E Transition Phase Services, it is required to replace any worn, failed or defective parts, use replacement parts which:
    - (A) are of equal quality to those required under this deed;
    - (B) provide a functionality and performance which satisfies Asset standards current at the time of replacement, including as a minimum meeting the standards of functionality and performance specified in the Code of Maintenance Standards, O&M Services Documents; and
    - (C) are fit for their intended purpose;
  - (viii) not make (or permit to be made) any:
    - (A) structural changes to the M5 East Motorway; or
    - (B) changes to the M5 East Motorway which are inconsistent with or outside the requirements of the SWTC,
 

without the Project Trustee's prior written approval (which approval must be given to the extent that the change is required in order for the O&M Contractor to comply with the Law);
  - (ix) promptly notify the Project Trustee of:
    - (A) any event, circumstance or change which has occurred (or is likely to occur) which could affect the functionality or integrity of the M5 East Motorway; or
    - (B) any other change made to the M5 East Motorway; and
  - (x) comply with the SWTC as it relates to the M5 East Motorway.
- (e) If any damage is caused by the O&M Contractor, its employees, agents or contractors or any employee of an agent or contractor in the performance of the M5E Transition Phase Services to any property or Utility Service, the O&M Contractor must promptly make good the damage at its own cost and pay any compensation payable in connection with the damage.



- (f) Upon completion of any M5E Transition Phase Services, the O&M Contractor must promptly and in a good and workmanlike manner remove all temporary protection measures installed in connection with them.
- (g) **(Inspection):** the Project Trustee, its employees and agents (including any subcontractors and their employees) may, at any time during the M5E Transition Phase, enter the M5 East Motorway and the Motorway Control Centre to inspect and observe the maintenance and repair of the M5 East Motorway or to exercise any right or perform any obligation which the Project Trustee has under any Project Document.
- (h) **(Advertising Signage):** The O&M Contractor must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the M5 East Motorway (or permit any third party to do so). However, this clause 19.16(h) will not prevent the O&M Contractor from installing and maintaining operational directional signage which is specified in the SWTC (but on the basis that the O&M Contractor obtains all other necessary Approvals in respect of such signage).
- (i) **(Fixtures, fittings and equipment):** The O&M Contractor must ensure that all dedicated equipment used by it in connection with the M5 East Motorway, will be:
  - (i) owned by the O&M Contractor with an option in favour of the Project Trustee to acquire title to them upon expiry or termination of this deed;
  - (ii) the subject of an agreement:
    - (A) with an option in favour of the Project Trustee to acquire title to them for nominal cost at the end of the term of such agreement; and
    - (B) which includes a right for the Project Trustee to assign its rights and obligations under the agreement to RMS (or its nominee) prior to the end of the term of such agreement on an early termination of this deed.
- (j) **(Notice of damage and accidents):** During the M5E Transition Phase, the O&M Contractor must promptly give the Project Trustee a detailed written report of:
  - (i) any damage to or defect or disrepair in the M5 East Motorway of which it is aware;
  - (ii) the action which the O&M Contractor recommends to correct that damage, defect or disrepair, and the estimated time that correction will require; and
  - (iii) any Incidents or other accidents involving material damage or injury which occur on the M5 East Motorway of which it is aware.

If the O&M Contractor provides or is required to provide a report to the Project Trustee in accordance with this clause 19.16(j), the O&M Contractor must thereafter take the action recommended in that report in accordance with, and to the extent of, its obligations under clause 26.9 and provide any additional information reasonably requested by RMS in respect of the subject matter of such report. For the purposes of interpreting clause 26.9 in the context of this clause 19.16(j), a reference to "Motorway" in that clause 26.9 is deemed to be a reference to "Motorway (including, during the M5E Transition Phase, the M5 East Motorway)".

- (k) **(Security):** The O&M Contractor must provide such security measures as are necessary for the protection and security of the M5E Transition Phase Services and the M5 East Motorway against theft, vandalism, unauthorised entry into the M5 East Motorway and any other unlawful acts.
- (l) **(M5E Transition Phase Services Fee):** the Project Trustee must pay the M5E Transition Phase Services Fee to the O&M Contractor in accordance with Schedule 42.

- (m) **(Additional and Reimbursable Services and abatements)** during the M5E Transition Phase:
- (i) if the O&M Contractor is required to provide Reimbursable Services or Additional Services, clause 21 and Schedule 41 shall apply in respect of such Reimbursable Services or Additional Services; and
  - (ii) abatements for unplanned availability (if any) shall be applied pursuant to Schedule 42 and the Unplanned Availability Abatements under Schedule 41 shall not apply.
- (n) The parties acknowledge and agree that, notwithstanding clause 14, Schedule 34 and Schedule 35:
- (i) the Project Trustee must not issue a Change Proposal to the O&M Contractor;
  - (ii) the Project Trustee must not direct a Change; and
  - (iii) the O&M Contractor is not required to implement a Change,
- in respect of the M5E or the M5E Transition Phase Services during the M5E Transition Phase, unless:
- (iv) that Change will not be implemented or otherwise take effect until after the M5E Transfer Date;
  - (v) the Change is expressly authorised under this clause 19.16;
  - (vi) agreed between the parties in writing; or
  - (vii) where the Project Trustee confirms at the time of the issue or direction that the costs and expenses of compliance are Reimbursable Services Fees.
- (o) **(Legal Challenges during M5E Transition Phase)** If a Legal Challenge occurs during the M5E Transition Phase and, as a consequence of that Legal Challenge, the O&M Contractor receives an order by a court or direction by the Project Trustee's Representative pursuant to clause 7.5(a) or clause 7.5(d) which requires that the O&M Contractor suspend or cease to perform any or all of its obligations under this deed, other than due to the circumstances contemplated in clause 7.5(e), there shall be no adjustment to the M5E Transition Phase Services Fee but the O&M Contractor shall continue to be entitled to the M5E Transition Phase Services Fee notwithstanding the suspension or cessation (unless the Project Trustee directs a Change) and the provisions of Schedule 42 will continue to apply during the period of suspension. For the purposes of interpreting clause 7.5 in the context of this clause 19.16(o), a reference to "Motorway" in that clause 7.5 is deemed to be a reference to "Motorway (including, during the M5E Transition Phase, the M5 East Motorway)".
- (p) **(Performance assessment and Reporting)**
- (i) In this clause 19.16(p) "Unplanned Availability Event" has the meaning given to that term in Schedule 42.
  - (ii) During the M5E Transition Phase, the O&M Contractor must prepare and include a Monthly Performance Report as an appendix to the Monthly Progress Report required to be submitted under the SWTC setting out the level of the O&M Contractor's performance of the M5E Transition Phase Services, for the immediately preceding Month, which must include (in addition to matters required by the SWTC) full details of the following:
    - (A) any Unplanned Availability Event;

- (B) in connection with any such Unplanned Availability Event, details of each of the following:
  - 1. the nature, date, time, extent and duration of the Unplanned Availability Event;
  - 2. the specific location of the Unplanned Availability Event;
  - 3. if applicable, the required date and time of rectification and the actual date and time of rectification of the Unplanned Availability Event; and
  - 4. relevant traffic volume data;
- (C) the total of any M5E Transition Phase Unplanned Availability Abatements calculated under Schedule 42, including a detailed breakdown of how these amounts were calculated;
- (D) any amounts in connection with which the O&M Contractor should not be liable for M5E Transition Phase Unplanned Availability Abatements (including reasons), under section 7 of Schedule 42; and
- (E) any other information that the Project Trustee reasonably requires in relation to the calculation of the M5E Transition Phase Services Fee or any M5E Transition Phase Unplanned Availability Abatement,

(collectively, the ***M5E Transition Phase Performance Data***).

- (iii) Within 5 days following the end of each Month during the M5E Transition Phase, the O&M Contractor must prepare and deliver to the Project Trustee a Monthly Progress Report for that Month (including the Monthly Performance Report).
- (iv) Within 8 Business Days following the end of each Quarter during the M5E Transition Phase and (to the extent the M5E Transition Phase expires part way through a Quarter), within 8 Business Days following the end of the Quarter ending immediately after the expiry of the M5E Transition Phase, the O&M Contractor must prepare and deliver to the Project Trustee a quarterly report (***Quarterly M5E Performance Report***) which consolidates the information contained in each of the Monthly Performance Reports prepared by it for the relevant Quarter.
- (v) The O&M Contractor must certify that each Monthly Performance Report and Quarterly M5E Performance Report is accurate, complete and correct.
- (vi) The O&M Contractor must:
  - (A) subject to the Project Trustee providing reasonable prior notice, give the Project Trustee and (to the extent reasonably required) its Associates the M5E Transition Phase Performance Data, the data and information from which the M5E Transition Phase Performance Data is derived, the Monthly Progress Reports, the Quarterly M5E Performance Reports and any information related to the calculation of the M5E Transition Phase Services Fee or any M5E Transition Phase Unplanned Availability Abatement under Schedule 42:
    - 1. at all reasonable times; and
    - 2. if requested by the Project Trustee, via an online portal;

- (B) ensure the availability and continuous integrity of the M5E Transition Phase Performance Data and the data and information from which the M5E Transition Phase Performance Data is derived;
  - (C) ensure that all M5E Transition Phase Performance Data and the data and information from which the M5E Transition Phase Performance Data is derived is not amended or deleted without the Project Trustee's prior consent; and
  - (D) ensure that the M5E Transition Phase Performance Data and the data and information from which the M5E Transition Phase Performance Data is derived is accurate and keep a copy of all M5E Transition Phase Performance Data and the data and information from which the M5E Transition Phase Performance Data is derived for 7 years.
- (vii) The O&M Contractor must, in addition to the other requirements of this clause 19.16(p), maintain (in electronic format) a log for recording the start and end times and any other information requested by the Project Trustee from time to time.
- (viii) The O&M Contractor must provide to the Project Trustee, within 28 Business Days of the end of each Financial Year in which the M5E Transition Phase occurs, an audit report, prepared by an independent and reputable auditor, who has audited the M5E Transition Phase Performance Data and the Monthly Performance Reports and Quarterly M5E Performance Reports for that Financial Year.
- (ix) At any time up to 36 months after the end of any Contract Year in which the M5E Transition Phase occurs, the Project Trustee may give notice to the O&M Contractor requiring an audit of the M5E Transition Phase Performance Data, Monthly Performance Reports and Quarterly M5E Performance Reports, the calculation of any amounts under Schedule 42 (or any of them) in connection with that Contract Year to verify their accuracy (***M5E Transition Phase Performance Audit Notice***).
- (x) If the Project Trustee gives the O&M Contractor a M5E Transition Phase Performance Audit Notice:
- (A) the Project Trustee will appoint and notify the O&M Contractor of a person appointed to conduct the audit (***M5E Transition Phase Performance Auditor***), at the Project Trustee's cost and on terms reasonably determined by the Project Trustee, which notice the Project Trustee must promptly provide to the O&M Contractor; and
  - (B) the O&M Contractor must, within a reasonable period, make the M5E Transition Phase Performance Data, Monthly Performance Reports and Quarterly M5E Performance Reports and any information related to the calculation of any amounts under Schedule 42 available, and provide all necessary assistance (including access to senior management and personnel as reasonably required by the M5E Transition Phase Performance Auditor), to the M5E Transition Phase Performance Auditor.
- (xi) If:
- (A) a report provided to the Project Trustee under clause 19.16(p)(viii);
  - (B) the report prepared by the M5E Transition Phase Performance Auditor under clause 19.16(p)(x); or

- (C) any review of the M5E Transition Phase Performance Data, Monthly Performance Reports and Quarterly M5E Performance Reports or information related to the M5E Transition Phase Unplanned Availability Abatement regime by the Project Trustee,

reveals that the M5E Transition Phase Performance Data or a Performance Report is not accurate, the O&M Contractor must:

- (D) fix the inaccuracy and reissue the relevant data or report to the Project Trustee;
- (E) reassess the occurrence or extent of any Unplanned Availability Event including the M5E Transition Phase Unplanned Availability Abatements originally applied (or which would have been originally applied);
- (F) reduce the amount of the next payment claim made in accordance with Schedule 42 or, where the M5E Transition Phase has expired and no further payment claim is to be made under Schedule 42, reduce the amount of the next Payment Claim, by any positive amount equal to:
  1. the reassessed M5E Transition Phase Unplanned Availability Abatements for the relevant Unplanned Availability Event(s); or
  2. the reassessed M5E Transition Phase Services Fee,  
calculated under Schedule 42, less:
    3. the M5E Transition Phase Unplanned Availability Abatements for the relevant Unplanned Availability Event(s) originally applied; or
    4. the reduction to the M5E Transition Phase Services Fee originally applied;  
and
- (G) pay the costs of the M5E Transition Phase Performance Auditor, or reimburse the Project Trustee on demand for any costs of the M5E Transition Phase Performance Auditor paid by the Project Trustee.

(xii) The O&M Contractor acknowledges and agrees that:

- (A) it is difficult to calculate with precision the diminution in value of the M5E Transition Phase Services to the Project Trustee that it may suffer in connection with each Unplanned Availability Event;
- (B) notwithstanding clause 19.16(p)(xii)(A), the application of the M5E Transition Phase Unplanned Availability Abatement associated with each Unplanned Availability Event reflects a genuine pre-estimate of the diminution in value of the M5E Transition Phase Services to the Project Trustee in connection with such Unplanned Availability Event;
- (C) both the Project Trustee and the O&M Contractor require a formula for calculation of that diminished value that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
- (D) it is in the economic interests of both parties that a formula of the nature referred to in clause 19.16(p)(xii)(B) be adopted and the calculation of the M5E Transition Phase Services Fee, the M5E Transition Phase Unplanned Availability Abatement under Schedule 42 meets the requirements of such a formula;
- (E) to the extent permissible:

1. it excludes and waives any right to the benefit of the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of the calculation of the M5E Transition Phase Services Fee, the M5E Transition Phase Unplanned Availability Abatement, or any related provision of this deed; and
2. it will not raise or allege in any dispute or proceedings (including a Claim by the Project Trustee under or relating to the calculation of the M5E Transition Phase Services Fee or any M5E Transition Phase Unplanned Availability Abatement), any argument or defence relating to the enforceability of such calculations or any related provision of this deed; and

(F) if the calculation of the M5E Transition Phase Services Fee or any M5E Transition Phase Unplanned Availability Abatement is held to be void or unenforceable for any reason in any Contract Year, clause 19.16(q) will not limit the Project Trustee's rights and the O&M Contractor's Liability to the Project Trustee in accordance with this deed or otherwise at Law for any Liability suffered by the Project Trustee as a consequence of any Unplanned Availability Events, but the O&M Contractor's Liability for any Unplanned Availability Events (including the consequences of those Unplanned Availability Events) will not exceed the amount of the applicable M5E Transition Phase Unplanned Availability Abatement, that would have applied if not for being void or unenforceable.

(q) **(M5E Transition Phase Unplanned Availability Abatements as only monetary compensation)**

- (i) Subject to clause 19.16(q)(ii), reduction of the M5E Transition Phase Services Fee by the application of M5E Transition Phase Unplanned Availability Abatements (as that term is defined in Schedule 42) will be the only monetary compensation payable by the O&M Contractor to the Project Trustee for Unplanned Availability Events (as that term is defined in Schedule 42) whether under the O&M Documents or at Law.
- (ii) Clause 19.16(q)(i) does not limit or exclude:
  - (A) the O&M Contractor's Liability to the Project Trustee for any cost or expenses incurred by the Project Trustee in engaging a party to rectify a Defect under clause 17;
  - (B) the Project Trustee's rights under clause 34;
  - (C) the Project Trustee's or any of its employees, agents and officers, entitlement to a Claim under this deed or at Law in respect of:
    1. any third party property damage; and
    2. any personal injury or death,for which the O&M Contractor or any of its Related Parties are Liable;
  - (D) the Project Trustee's or any of its Associate's entitlement to recover any costs or expenses incurred by the Project Trustee as a consequence of exercising its rights under clause 31;
  - (E) the Project Trustee's rights under this deed or any other O&M Document in respect of the event that caused or contributed to the Unplanned Availability Event (as that term is defined in Schedule 42);
  - (F) any payment on termination under clause 31;

- (G) the Project Trustee's entitlement to recover any costs or expenses incurred by the Project Trustee as a consequence of exercising its rights under clause 8.6; or
- (H) any other right under this deed or at Law in relation to any non-monetary compensation.

(r) **(Core Services Fee during the M5E Transition Phase)**

(i) The parties acknowledge and agree that:

- (A) at the time the parties entered into this Deed, the Core Services Fee contained in the original Table A.1 in Schedule 41 was a combined fee, comprising the Core Services Fee as a combined figure for Core Services provided in relation to both the New M5 Motorway and the M5 East Motorway;
- (B) by a deed of amendment titled "WestConnex M5 O&M Deed Third Deed for Contract Amendment", the parties agreed that the O&M Contractor would provide the M5E Transition Phase Services during the M5E Transition Phase;
- (C) in order to calculate the M5E Transition Phase Services Fee and to avoid duplication between the M5E Transition Phase Services Fee and the Core Services Fee, the parties agreed to replace the original Table A.1 in Schedule 41 (at the time the parties entered into this Deed) with a revised Table A.1 to show separately for each month from January 2020 until the end of the Term:
  - 1. the amount of the Core Services Fee attributable to the New M5 Motorway (column (c)); and
  - 2. the amount of the Core Services Fee attributable to the M5 East Motorway (column (b)); and
- (D) the separation of the fees in Table A.1 in Schedule 41 to allocate amounts to each Motorway is solely to enable the appropriate calculation of the M5E Transition Phase Services Fee and does not create separable portions for the purpose of the Core Services Fee or the performance of the O&M Services.

(ii) During the M5E Transition Phase:

- (A) the O&M Contractor will be paid the M5E Transition Phase Services Fee in respect of the M5 East Motorway in accordance with Schedule 42 and will therefore only be entitled to payment of the Core Services Fee as it relates to the New M5 Motorway, as shown in column (c) of Table A.1 in Part A of Schedule 41;
- (B) the Core Services Fee (**CSF<sub>m</sub>**) (as used in the calculation of the O&M Service Fee in section 4 of Schedule 41) is therefore defined as follows:

**CSF<sub>m</sub> = Core Services Fee for the relevant Month, as set out in column (c) of Table A.1 in Part A of this Schedule 41;** and
- (C) the calculation of the O&M Services Fee (**OMSF<sub>m</sub>**) under section 4 of Schedule 41 is otherwise unchanged.

(iii) If the M5E Transition Phase expires part way through a Month:

- (A) the calculation of the Core Services Fee will be adjusted pro-rata to reflect the O&M Contractor's entitlement to payment (subject to Schedule 41) of:

1. the Core Services Fee in column (c) of Table A.1 in Part A of Schedule 41 for the part of the Month in which the M5E Transition Phase applied; and
  2. the Core Services Fee in column (a) of Table A.1 in Part A of Schedule 41 for the part of the Month after the expiry of the M5E Transition Phase; and
- (B) the O&M Contractor is entitled to the M5E Transition Phase Services Fee (adjusted pro-rata) for the part of the Month in which the M5E Transition Phase applied, in accordance with section 4 of Schedule 42.

(s) **(Heavy Towing Services)**

- (i) During the M5E Transition Phase the O&M Contractor must provide the Heavy Towing Services.
- (ii) The Project Trustee must pay to the O&M Contractor the Heavy Towing Services Fee (as that term is defined in Schedule 42) in accordance with Schedule 42, for the provision of Heavy Towing Services by the O&M Contractor in accordance with clause 19.16(s)(i).



### **Schedule 3 - M5E Transition Phase Services Fee**

For the purposes of Item 24 in Schedule 1 to this deed, Schedule 42 to the Contract is deleted and replaced with the following:

### **Schedule 42 M5E Transition Phase Services Fee**

**(Clause 19.16(I))**

## SCHEDULE 42

### M5E Transition Phase Services Fee

#### 1. Definitions

Unless the context otherwise requires, references to defined terms in this Schedule will have the meaning given to them in this deed.

**Available** has the meaning given in Schedule 46.

**Base M5E Transition Phase Unplanned Availability Abatement** means the Quarterly amount forming a component of the M5E Transition Phase Unplanned Availability Abatement calculation (if applicable) in accordance with this Schedule.

**Carriageway** has the meaning given in Schedule 46.

**Drop-Off Event** means the Lane Closure of a single Lane in order for the O&M Contractor to deliver O&M Personnel and/or equipment to any part of the M5 East Motorway for the performance of M5E Transition Phase Services, and provided that:

- (a) no more than a single Lane is not Available at any one time; and
- (b) the period during which that Lane is not Available does not exceed 10 minutes.

**Heavy Towing Services Fee** means the Monthly amount forming a component of the M5E Transition Phase Services Fee, calculated in accordance with this Schedule.

**Labour Price Indexation Factor** has the meaning given in Schedule 41.

**Lane** has the meaning given in Schedule 46.

**Lane Closure** has the meaning given in Schedule 46.

**M5E Invoice** means a tax invoice within the meaning of the GST law reflecting the M5E Transition Phase Services Fee for the Month to which the invoice relates, issued by the O&M Contractor's Representative in accordance with section 3(a) of this Schedule and in the form of the Annexure to this Schedule.

**M5E Transition Phase Core Services Fee** means the Monthly amount forming a component of the M5E Transition Phase Services Fee, calculated in accordance with this Schedule.

**M5E Transition Phase Services Fee** means the service payment payable to the O&M Contractor for performance of the M5E Transition Phase Services, calculated in accordance with section 4 of this Schedule.

**M5E Transition Phase Unplanned Availability Abatement** means the Quarterly amount forming a component the M5E Transition Phase Services Fee calculation (if applicable) in accordance with this Schedule.

**Main Carriageway** means the eastbound or westbound through-Carriageway of the M5 East Motorway.

**Main Carriageway Closure** means each separate instance on which all Lanes of a single Main Carriageway are not Available.

**Mobile Activity** has the meaning given in Schedule 46.

**Mobile Closure** means where the speed limit has been reduced below the posted speed limit for normal operations on a single Lane (or part thereof) in order for the O&M Contractor to perform a Mobile Activity on any part of the M5 East Motorway, and provided that:

- (a) all Lanes remain Available at all times;
- (b) the speed limit is not reduced on more than a single Lane at any one time; and
- (c) the Mobile Activity progresses along the Lane in a single direction at a speed of not less than 5 km per hour.

**Non-Permitted Closure** means a Main Carriageway Closure, Ramp Closure, Lane Closure, Partial Closure, Drop-Off Event, Pick-Up Event or a Mobile Closure which is:

- (a) not a Permitted Closure; or
- (b) not carried out in accordance with the terms of a Road Occupancy Licence, any relevant Approval or the terms of this deed.

**Partial Closure** has the meaning given in Schedule 46.

**Permitted Closure** means the Main Carriageway Closure, Ramp Closure, Lane Closure, Partial Closure, Drop-Off Event, Pick-Up Event or a Mobile Closure specified in section 8 of this Schedule.

**Pick-Up Event** means the Lane Closure of a single Lane in order for the O&M Contractor to pick-up O&M Personnel and/or equipment from any part of the M5 East Motorway for the performance of M5E Transition Phase Services, and provided that:

- (a) no more than a single Lane is not Available at any one time; and
- (b) the period during which that Lane is not Available does not exceed 10 minutes.

**Prohibited Period** has the meaning given in Schedule 46.

**Quarterly Indexation Factor** has the meaning given in Schedule 41.

**Ramp** means each of the entry ramps and exit ramps connecting the Sydney road network and a Main Carriageway.

**Ramp Closure** has the meaning given in Schedule 46.

**Unindexed M5E Transition Phase Core Services Fee** means the Monthly amount forming a component of the M5E Transition Phase Core Services Fee, calculated in accordance with this Schedule.

**Unplanned Availability Event** means:

- (a) Non-Permitted Closure; or
- (b) A Permitted Closure which arises out of or in connection with, or continues as a result of:
  - (i) any failure by the O&M Contractor or any Related Party of the O&M Contractor (which for the avoidance of doubt includes Subcontractors of the O&M Contractor) to comply with Law;
  - (ii) any failure by the O&M Contractor or any Related Party of the O&M Contractor to comply with its obligations under this deed; or
  - (iii) any other act or omission of the O&M Contractor or any Related Party of the O&M Contractor (which for the avoidance of doubt includes Subcontractors of the O&M Contractor) which is not:
    - (A) expressly permitted by this deed; or
    - (B) required to fulfil the O&M Contractor's obligations under this deed.

## 2. General

- (a) Subject to the terms of this deed:
  - (i) the O&M Contractor is entitled to be paid the M5E Transition Phase Services Fee; and
  - (ii) in consideration of delivery of the M5E Transition Phase Services, the Project Trustee must pay the M5E Transition Phase Services Fee to the O&M Contractor in accordance with this Schedule.
- (b) All payments made by the Project Trustee pursuant to this Schedule must be made:
  - (i) in Australian dollars;
  - (ii) by payments into the bank account identified in the Annexure to this Schedule for value on the due date; and

- (iii) in immediately available funds.
- (c) The fee adjustment in respect of the M5E Transition Phase Unplanned Availability Abatement will be applied as follows:
  - (i) during the M5E Transition Phase, the fee adjustment will be applied in the Month immediately following the end of each Quarter (if applicable); and
  - (ii) any fee adjustment which has accrued but has not yet been applied at the expiry of the M5E Transition Phase shall be applied at the time at which the next Unplanned Availability Abatement is to be applied under Schedule 41.

### 3. **Payments**

- (a) On or before the 5th day of each Month, the O&M Contractor must submit to the Project Trustee the M5E Invoice for the M5E Transition Phase Services Fee for the previous Month.
- (b) Subject to receiving a M5E Invoice from the O&M Contractor under section 3(a), the Project Trustee must pay the O&M Contractor the amount stated to be payable in the M5E Invoice within 15 Business Days of the date the M5E Invoice is provided in accordance with section 3(a).
- (c) The payment of the M5E Transition Phase Services Fee by the Project Trustee is not evidence that the M5E Transition Phase Services have been carried out by the O&M Contractor in accordance with the O&M Documents, or an admission of Liability, and is only to be taken as payment on account.

### 4. **M5E Transition Phase Services Fee**

The M5E Transition Phase Services Fee will be:

- (a) the M5E Transition Phase Core Services Fee; plus
- (b) the Heavy Towing Services Fee; minus
- (c) the M5E Transition Phase Unplanned Availability Abatement.

### 5. **M5E Transition Phase Core Services Fee**

- (a) The M5E Transition Phase Core Services Fee (**CSF<sub>m</sub>**) is calculated as follows:

$$\mathbf{CSF_m = UCSF_m \times (1 + (C \times LPIF_q) + (D \times QIF_q))}$$

Where:

UCSF<sub>m</sub> = Unindexed M5E Transition Phase Core Services Fee for the relevant Month (applied on a pro-rata basis for any part-Month during the M5E Transition Phase), as set out in Table 1 of this Schedule

C = 0.65

LPIF<sub>q</sub> = Labour Price Indexation Factor for the relevant Quarter

D = 0.35

QIF<sub>q</sub> = Quarterly Indexation Factor for the relevant Quarter

- (b) **Unindexed M5E Transition Phase Core Services Fee**

Month (2020)	Unindexed M5E Transition Phase Core Services Fee (\$)
May	
June	
July	
August	
September	
October	
November	
December	

**(Table 1 – Unindexed M5E Transition Phase Core Services Fee (without abatements))**

- (c) The parties acknowledge and agree that:
- (i) Table 1 reflects the agreement between the parties as to the Unindexed M5E Transition Phase Core Services Fee which would apply (subject to abatements) for Months during the M5E Transition Phase up to December 2020; however
  - (ii) the M5E Transition Phase is anticipated to end before the expiry of the final Month noted in Table 1.
- (d) In the event that the M5E Transition Phase extends beyond December 2020, the monthly Unindexed M5E Transition Phase Core Services Fee that applies in respect of the months of the M5E Transition Phase that extend beyond December 2020 shall:
- (i) be agreed between the parties, having regard to the fees in column (b) of Table A.1 of Schedule 41 in respect of the same time period; and
  - (ii) not exceed an amount equal to 110% of the amount of the fees in column (b) of Table A.1 of Schedule 41 in respect of the same time period. The parties agree that the addition of a maximum of 10% above the fees in column (b) of Table A.1 of Schedule 41 represents a contingency for the O&M Contractor's additional costs, which is subject to agreement pursuant to section 5(d)(i) and will not apply automatically.

**6. M5E Transition Phase Unplanned Availability Abatement**

- (a) Subject to sections 2(c) and 7, if an Unplanned Availability Event, occurs during a Quarter during the M5E Transition Phase, a M5E Transition Phase Unplanned Availability Abatement will be incurred by the O&M Contractor for that Quarter.
- (b) The M5E Transition Phase Unplanned Availability Abatement (**UAA<sub>q</sub>**) for an Unplanned Availability Event is to be calculated in accordance with this section 6 of this Schedule.
- (c) Where the same Unplanned Availability Event extends over two (or more) Quarters, an Unplanned Availability Event will be deemed to have occurred in each Quarter over which the Unplanned Availability Event extends (other than for the purposes of clause 31.6(c)(viii) of this deed, where the Unplanned Availability Event will be deemed to have occurred only in the first of the two (or more) Quarters).

**(d) Calculation of the total M5E Transition Phase Unplanned Availability Abatement for Quarter**

The total M5E Transition Phase Unplanned Availability Abatement for each Quarter during the M5E Transition Phase (**UAA<sub>q</sub>**) is calculated as follows:

$$UAA_q = \sum UAA_{AE}$$

Where:

$$UAA_{AE} = BUAA_{AE} \times (1 + QIF_q)$$

BUAA<sub>AE</sub> = Base M5E Transition Phase Unplanned Availability Abatement for each Unplanned Availability Event in the relevant Quarter, as set out in Table 2 of this Schedule

QIF<sub>q</sub> = Quarterly Indexation Factor for the relevant Quarter

**(e) Base M5E Transition Phase Unplanned Availability Abatement for each Unplanned Availability Event**

<b>M5E Transition Phase Unplanned Availability Event</b>		<b>Base M5E Transition Phase Unplanned Availability Abatement (BUAA<sub>AE</sub>) (ex GST)</b>
<b>Time</b>	<b>Description</b>	
<p>Eastbound on the M5 East Motorway during the periods between 4.30am to 10am and 3pm to 9.30pm on each weekday, excluding public holidays.</p> <p>OR</p> <p>Westbound on the M5 East Motorway during the periods between 5am to 10am and 3pm to 10pm on each weekday, excluding public holidays.</p>	All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is up to and including 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.	
	All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is more than 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.	
	A Lane is closed at any point on the M5 East Motorway.	
	A single Main Carriageway Closure in either an eastbound or westbound direction at any point on the M5 East Motorway.	
	Concurrent Main Carriageway Closures of the eastbound and westbound Main Carriageways of the M5 East Motorway at any points on the Main Carriageways of the M5 East Motorway.	
	A single Ramp Closure of the M5 East Motorway only.	
<p>Eastbound on the M5 East Motorway during the periods between:</p> <p>(a) 10am to 3pm on each weekday;</p> <p>(b) 9.30pm on Friday night to 9.30pm on Sunday night; and</p> <p>(c) 9.30pm on the day before a public holiday to 4.30am on the day following that public holiday.</p>	<p>All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is up to and including 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.</p>	
	All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is more than 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.	

<b>M5E Transition Phase Unplanned Availability Event</b>		<b>Base M5E Transition Phase Unplanned Availability Abatement (BUAA<sub>AE</sub>) (ex GST)</b>
<b>Time</b>	<b>Description</b>	
OR  Westbound on the of the M5 East Motorway during the periods between: (d) 10am to 3pm on each weekday; (e) 10pm on Friday night to 10pm on Sunday night; and (f) 10pm on the day before a public holiday to 5am on the day following that public holiday.	A Lane is closed at any point on the M5 East Motorway.	
	A single Main Carriageway Closure in either an eastbound or westbound direction at any point on the M5 East Motorway.	
	Concurrent Main Carriageway Closures of the eastbound and westbound Main Carriageways of the M5 East Motorway at any points on the Main Carriageways of the M5 East Motorway.	
	A single Ramp Closure of the M5 East Motorway only.	
Eastbound on the M5 East Motorway, on Sunday, Monday, Tuesday, Wednesday and Thursday for the period between 9.30pm to 4:30am, excluding public holidays.  OR  Westbound on the M5 East Motorway, on Sunday, Monday, Tuesday, Wednesday and Thursday for the period between 10pm to 5am, excluding public holidays.	All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is up to and including 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.	
	All traffic Lanes remain completely Available on the M5 East Motorway, however the posted speed at any point on the M5 East Motorway is more than 20km per hour less than the posted speed limit for normal operations for that location on the M5 East Motorway.	
	A Lane is closed at any point on the M5 East Motorway.	
	A single Main Carriageway Closure in either an eastbound or westbound direction at any point on the M5 East Motorway.	
	Concurrent Main Carriageway Closures of the eastbound and westbound Main Carriageways of the M5 East Motorway at any points on the Main Carriageways of the M5 East Motorway.	
	A single Ramp Closure of the M5 East Motorway only.	

**(Table 2 – Base M5E Transition Phase Unplanned Availability Abatements)**

(f) Capitalised terms used in Table 2 of this Schedule that are not defined in this Schedule have the meaning given in Schedule 46.

- (g) Base M5E Transition Phase Unplanned Availability Abatements are calculated pro-rata in 15 minute bands for the duration of the Unplanned Availability Event.
- (h) **Worked Example:**
- (i) During the M5E Transition Phase, for any Unplanned Availability Events arising from the carrying out of the M5E Transition Phase Services in relation to the M5 East Motorway, the Base M5E Transition Phase Unplanned Availability Abatement will be 25% of the value set out in Table 2 of this Schedule.

## 7. Relief from M5E Transition Phase Unplanned Availability Abatement

M5E Transition Phase Unplanned Availability Abatements will not be incurred by the O&M Contractor to the extent that such M5E Transition Phase Unplanned Availability Abatements are caused by:

- (a) a Force Majeure event;
- (b) a D&C Defect;
- (c) an Other Defect except where the O&M Contractor is required to rectify such Other Defect in accordance with this deed and provided that the O&M Contractor has given the Project Trustee all notices it is required to give within the time required by this deed in relation to the Other Defect;
- (d) a suspension directed under clauses 9.6(d), 11.8(c) or 11.9(c) of this deed;
- (e) a breach of this deed by the Project Trustee;
- (f) any action taken by the Project Trustee under clause 8.6(a)(iii) of this deed;
- (g) any OMCS Defects;
- (h) a deliberate or intentional act or omission of the Existing M5 East O&M Contractor with reckless disregard of, or wanton indifference to, the consequences;
- (i) any Tolling Equipment Works; or
- (j) any New M5 Main Works,

and O&M Contractor has complied with any obligations it has under this deed or the O&M Interface Agreement to mitigate such events, their effects or the circumstances surrounding them.

## 8. Permitted Closures

The Permitted Closures for the M5 East Motorway are:

- (a) any Main Carriageway Closures, Lane Closures, Ramp Closures, Partial Closures, Drop-Off Events, Pick-Up Events or Mobile Closures which may be required for Incidents (other than an Incident caused or contributed to by the O&M Contractor or any Related Party of the O&M Contractor (which for the avoidance of doubt includes Subcontractors of the O&M Contractor)); and
- (b) the following additional closures:
  - (i) **Main Carriageway Closures:**
    - (A) no more than one concurrent closure of both Main Carriageways per month (at any point on each Main Carriageway); and
    - (B) in addition to paragraph (A) above, no more than three closures of a single Main Carriageway per month;
  - (ii) **Ramp Closures:** Zero Ramp Closures;



- (iii) **Lane Closures:** Zero Lane Closures which are in addition to Lane Closures which are part of Drop-Off Events, Pick-Up Events and Main Carriageway Closures in this section 8 of this Schedule;
- (iv) **Partial Closures:**
  - (A) Zero Type A Partial Closures; and
  - (A) Zero Type B Partial Closures;
- (v) **Drop-Off Events:** no more than ten Drop-Off Events per day;
- (vi) **Pick-Up Events:** no more than ten Pick-Up Events per day; and
- (vii) **Mobile Closures:** no more than three Mobile Closures per week,

in each case outside of the Prohibited Period. For the avoidance of doubt, subject to section 8(a) of this Schedule, there are no Permitted Closures in the Prohibited Period.

## 9. Heaving Towing Services Fee

- (a) The Heavy Towing Services Fee to be paid by the Project Trustee to the O&M Contractor, for the relevant month (applied on a pro-rata basis for any part-month during the M5E Transition Phase), for the provision of Heavy Towing Services in accordance with clause 19.16(s)(i) of this deed are set out in Table 3.

Month (2020)	Heavy Towing Services Fee (\$)
May	29,775
June	32,611
July	29,775
August	29,775
September	31,193
October	29,775
November	29,775
December	29,775

**(Table 3 – Heavy Towing Services Fee)**

- (b) The parties acknowledge and agree that:
  - (i) Table 3 reflects the agreement between the parties as to the Heavy Towing Services Fee which would apply for Months during the M5E Transition Phase up to December 2020; however
  - (ii) the M5E Transition Phase is anticipated to end before the expiry of the final Month noted in Table 3.
- (c) In the event that the M5E Transition Phase extends beyond December 2020, the monthly Heavy Towing Services Fee that applies in respect of the months of the M5E Transition Phase that extend beyond December 2020 shall be agreed between the parties, having regard to the fees in Table 3.

**Annexure**

**M5E Invoice**

**TAX INVOICE NUMBER [Insert invoice number]**

Invoice date: *[Insert invoice date]*

PO Number: *[Insert PO number]*

Customer no: *[Insert customer no.]*

**WCX M5 PT Pty Ltd (ACN 608 798  
465) ATF WCX M5 Project Trust**  
Level 9, 1 Chifley Square  
Sydney NSW 2000 Australia

**Fulton Hogan Egis O&M Pty  
Limited (ABN 37 609 764 730)**  
Level 7, 50 Clarence Street  
SYDNEY NSW 2000

**Telephone:** +61 2 8297 1300

**Facsimile** +61 2 9299 1310

**Email:**

[danielle.sinclair@fheom.com.au](mailto:danielle.sinclair@fheom.com.au)

**Customer Invoice**

<b>Description</b>			<b>Amount \$</b>
Payment period	<b>Particulars of M5E Transition Phase Services in respect of which payment is claimed</b>	<b>Documents or other information provided in respect of amount claimed</b>	
<i>[Insert period in respect of which payment is claimed]</i>	<i>[Insert detailed list of work completed for which payment is sought, including in respect of the M5E Transition Phase Core Services Fee and the Heavy Towing Services Fee]</i>	<i>[Insert details of any supporting documentation or other information provided to verify amounts claimed]</i>	<i>[Insert amount owing in respect of M5E Transition Phase Services]</i>
			<i>LESS</i>
	<i>[Particulars of M5E Transition Phase Unplanned Availability Abatement to be applied]</i>		<i>[Insert amount of M5E Transition Phase Unplanned Availability Abatement]</i>

Net Amount *[insert]*

GST *[insert]*

**Total Invoice due** *[insert]*

**Please remit to**

Fulton Hogan Egis O&M Pty Ltd  
 Level 7, 50 Clarence Street  
 Sydney NSW 2000

Bank Name: ANZ Bank Corporation  
 Account Name: Fulton Hogan Egis O&M Pty Ltd  
 BSB: 012019  
 Account No: 458615365  
 Reference: M5E Amending Deed  
 Payment Terms: 15 Business Days

Please send remittance advice to: [danielle.sinclair@fheom.com.au](mailto:danielle.sinclair@fheom.com.au)

## Schedule 4 – Core Services Fee table

For the purposes of Item 23 in Schedule 1 to this deed, Table A.1 in Schedule 41 of the Contract is deleted and replaced with the following:

**Table A.1**

Year	Quarter	Month	Date From	Date To	Core Services Fee (ex GST)	M5E	New M5
					Column (a)	Column (b)	Column (c)
Year 1	1	1	4.01.2016	31.01.2016			
	1	2	1.02.2016	29.02.2016			
	1	3	1.03.2016	31.03.2016			
	2	4	1.04.2016	30.04.2016			
	2	5	1.05.2016	31.05.2016			
	2	6	1.06.2016	30.06.2016			
	3	7	1.07.2016	31.07.2016			
	3	8	1.08.2016	31.08.2016			
	3	9	1.09.2016	30.09.2016			
	4	10	1.10.2016	31.10.2016			
	4	11	1.11.2016	30.11.2016			
	4	12	1.12.2016	31.12.2016			
Year 2	1	1	1.01.2017	31.01.2017			
	1	2	1.02.2017	28.02.2017			
	1	3	1.03.2017	31.03.2017			
	2	4	1.04.2017	30.04.2017			
	2	5	1.05.2017	31.05.2017			
	2	6	1.06.2017	30.06.2017			
	3	7	1.07.2017	31.07.2017			
	3	8	1.08.2017	31.08.2017			
	3	9	1.09.2017	30.09.2017			
	4	10	1.10.2017	31.10.2017			
	4	11	1.11.2017	30.11.2017			
	4	12	1.12.2017	31.12.2017			
Year 3	1	1	1.01.2018	31.01.2018			
	1	2	1.02.2018	28.02.2018			

Year	Quarter	Month	Date From	Date To	Core Services Fee (ex GST)	M5E	New M5
					Column (a)	Column (b)	Column (c)
	1	3	1.03.2018	31.03.2018			
	2	4	1.04.2018	30.04.2018			
	2	5	1.05.2018	31.05.2018			
	2	6	1.06.2018	30.06.2018			
	3	7	1.07.2018	31.07.2018			
	3	8	1.08.2018	31.08.2018			
	3	9	1.09.2018	30.09.2018			
	4	10	1.10.2018	31.10.2018			
	4	11	1.11.2018	30.11.2018			
	4	12	1.12.2018	31.12.2018			
Year 4	1	1	1.01.2019	31.01.2019			
	1	2	1.02.2019	28.02.2019			
	1	3	1.03.2019	31.03.2019			
	2	4	1.04.2019	30.04.2019			
	2	5	1.05.2019	31.05.2019			
	2	6	1.06.2019	30.06.2019			
	3	7	1.07.2019	31.07.2019			
	3	8	1.08.2019	31.08.2019			
	3	9	1.09.2019	30.09.2019			
	4	10	1.10.2019	31.10.2019			
	4	11	1.11.2019	30.11.2019			
	4	12	1.12.2019	31.12.2019			
Year 5	1	1	1.01.2020	31.01.2020			
	1	2	1.02.2020	29.02.2020			
	1	3	1.03.2020	31.03.2020			
	2	4	1.04.2020	30.04.2020			
	2	5	1.05.2020	31.05.2020			
	2	6	1.06.2020	30.06.2020			
	3	7	1.07.2020	31.07.2020			
	3	8	1.08.2020	31.08.2020			

Year	Quarter	Month	Date From	Date To	Core Services Fee (ex GST)	M5E	New M5
					Column (a)	Column (b)	Column (c)
	3	9	1.09.2020	30.09.2020			
	4	10	1.10.2020	31.10.2020			
	4	11	1.11.2020	30.11.2020			
	4	12	1.12.2020	31.12.2020			
Year 6	1	1	1.01.2021	31.01.2021			
	1	2	1.02.2021	28.02.2021			
	1	3	1.03.2021	31.03.2021			
	2	4	1.04.2021	30.04.2021			
	2	5	1.05.2021	31.05.2021			
	2	6	1.06.2021	30.06.2021			
	3	7	1.07.2021	31.07.2021			
	3	8	1.08.2021	31.08.2021			
	3	9	1.09.2021	30.09.2021			
	4	10	1.10.2021	31.10.2021			
	4	11	1.11.2021	30.11.2021			
	4	12	1.12.2021	31.12.2021			
Year 7	1	1	1.01.2022	31.01.2022			
	1	2	1.02.2022	28.02.2022			
	1	3	1.03.2022	31.03.2022			
	2	4	1.04.2022	30.04.2022			
	2	5	1.05.2022	31.05.2022			
	2	6	1.06.2022	30.06.2022			
	3	7	1.07.2022	31.07.2022			
	3	8	1.08.2022	31.08.2022			
	3	9	1.09.2022	30.09.2022			
	4	10	1.10.2022	31.10.2022			
	4	11	1.11.2022	30.11.2022			
	4	12	1.12.2022	31.12.2022			
Year 8	1	1	1.01.2023	31.01.2023			
	1	2	1.02.2023	28.02.2023			

Year	Quarter	Month	Date From	Date To	Core Services Fee (ex GST)	M5E	New M5	
					Column (a)	Column (b)	Column (c)	
	1	3	1.03.2023	31.03.2023				
	2	4	1.04.2023	30.04.2023				
	2	5	1.05.2023	31.05.2023				
	2	6	1.06.2023	30.06.2023				
	3	7	1.07.2023	31.07.2023				
	3	8	1.08.2023	31.08.2023				
	3	9	1.09.2023	30.09.2023				
	4	10	1.10.2023	31.10.2023				
	4	11	1.11.2023	30.11.2023				
	4	12	1.12.2023	31.12.2023				
	Year 9	1	1	1.01.2024	31.01.2024			
		1	2	1.02.2024	29.02.2024			
1		3	1.03.2024	31.03.2024				
2		4	1.04.2024	30.04.2024				
2		5	1.05.2024	31.05.2024				
2		6	1.06.2024	30.06.2024				
3		7	1.07.2024	31.07.2024				
3		8	1.08.2024	31.08.2024				
3		9	1.09.2024	30.09.2024				
4		10	1.10.2024	31.10.2024				
4		11	1.11.2024	30.11.2024				
4		12	1.12.2024	31.12.2024				
Year 10	1	1	1.01.2025	31.01.2025				
	1	2	1.02.2025	28.02.2025				
	1	3	1.03.2025	31.03.2025				
	2	4	1.04.2025	30.04.2025				
	2	5	1.05.2025	31.05.2025				
	2	6	1.06.2025	30.06.2025				
	3	7	1.07.2025	31.07.2025				
	3	8	1.08.2025	31.08.2025				

Year	Quarter	Month	Date From	Date To	Core Services Fee (ex GST) Column (a)	M5E Column (b)	New M5 Column (c)
	3	9	1.09.2025	30.09.2025			
	4	10	1.10.2025	31.10.2025			
	4	11	1.11.2025	30.11.2025			
	4	12	1.12.2025	31.12.2025			