

# Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - Project Deed

The State of Queensland

The State

APL Co Pty Limited (TQ Operations) and TQ APL Asset Co Pty Limited (TQ  
Trustee) as trustee of the TQ APL Asset Trust (TQ Asset Trust)  
PPP Cos

## Table of Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>12</b>
1.1	Definitions.....	12
1.2	Interpretation .....	59
1.3	Replacement body interpretation .....	60
1.4	No bias against drafting party .....	60
1.5	Business Day.....	60
1.6	Certification.....	60
1.7	Order of precedence.....	60
1.8	Cost of performing obligations .....	61
1.9	Fitness for purpose .....	61
1.10	Role of the PPP Cos.....	61
<b>2.</b>	<b>Conditions Precedent .....</b>	<b>65</b>
2.1	Conditions Precedent .....	65
2.2	Satisfaction of Conditions Precedent .....	65
2.3	Waiver of Conditions Precedent.....	66
2.4	Condition Precedent Deadline Dates .....	66
<b>3.</b>	<b>Concession Period.....</b>	<b>66</b>
3.1	Commencement date .....	66
3.2	Expiry date.....	66
<b>4.</b>	<b>The Projects .....</b>	<b>67</b>
4.1	Grant of Concession .....	67
4.2	Each PPP Co's primary obligations.....	67
4.3	Project risk.....	67
4.4	The State AL Works.....	68
4.5	Each PPP Co's acknowledgments regarding the State AL Works.....	68
4.6	Each PPP Co's acknowledgements regarding the NB Works and the EWAG Works.....	69
<b>5.</b>	<b>Security Bonds.....</b>	<b>71</b>
5.1	Provision of Bonds.....	71
5.2	Requirements for Bonds .....	71
5.3	Replacement of Bonds.....	72
5.4	No injunction.....	72
5.5	Proceeds of Bonds .....	72
5.6	No interest .....	72
5.7	No trust.....	72
5.8	Release of Bonds .....	72
5.9	Quantum of security.....	73
<b>6.</b>	<b>Role of parties .....</b>	<b>73</b>
6.1	The State as an Authority .....	73
6.2	Other Authorities.....	74
6.3	No partnership, joint venture or other fiduciary relationship.....	74
6.4	The State's representatives .....	74
6.5	PPP Cos' representatives .....	75
6.6	Senior Project Group .....	75
6.7	Independent Verifier .....	76
6.8	Proof Engineer and Construction Verifier .....	78
<b>7.</b>	<b>Quality.....</b>	<b>78</b>

7.1	Quality system .....	78
7.2	Quality management and certification .....	79
7.3	Project quality non-conformance.....	80
7.4	Monitoring and audits .....	80
7.5	The State's right to enter, inspect and test .....	81
<b>8.</b>	<b>Land .....</b>	<b>83</b>
8.1	Access to and from Licensed Construction Areas .....	83
8.2	Extra Land .....	83
8.3	Condition of land.....	84
8.4	Permitted use .....	85
8.5	Environmental issues.....	85
8.6	Contamination .....	86
8.7	Native Title Claim.....	88
8.8	Artefacts .....	91
8.9	Utility owners .....	93
8.10	Licensed Maintenance Areas.....	93
8.11	Licence not coupled with grant or interest.....	94
8.12	Revocation.....	94
8.13	TQ Trustee's obligations .....	94
<b>9.</b>	<b>Laws and Approvals .....</b>	<b>94</b>
9.1	Compliance with laws .....	94
9.2	Approvals .....	94
9.3	Planning Approval.....	96
9.4	Modifications to Planning Approval .....	96
9.5	Legal challenge to Planning Approval .....	97
9.6	Changes in Air Filtration Law .....	99
9.7	No changes in Perpetual Lease .....	99
<b>10.</b>	<b>Project Plans .....</b>	<b>99</b>
10.1	Purpose .....	99
10.2	Fitness for purpose .....	100
10.3	Project Plans .....	100
10.4	Updated Project Plans .....	100
10.5	Review by the State.....	101
10.6	The State may request update.....	101
10.7	No obligation to review.....	102
10.8	Compliance with Project Plans.....	102
10.9	Restrictions on carrying out the Project Activities.....	102
10.10	No relief .....	102
<b>11.</b>	<b>General obligations applying to the Project Activities .....</b>	<b>103</b>
11.1	All work included.....	103
11.2	Workplace Health, Safety & Rehabilitation.....	103
11.3	Interference, obstruction and nuisance .....	105
11.4	Complaints.....	105
11.5	Traffic management.....	106
11.6	Security .....	106
11.7	Industrial issues .....	106
11.8	Community liaison .....	107
11.9	Public Utility Plant .....	107
11.10	Upstream Interface Agreements .....	107
11.11	Direct Interface Agreements .....	108
11.12	Certification Schedule.....	108
11.13	Portable Long Service Leave Levy and Training Levy .....	108

11.14	Training .....	108
11.15	Local Industry Participation .....	108
<b>12.</b>	<b>D&amp;C Phase.....</b>	<b>109</b>
12.1	D&C Activities .....	109
12.2	D&C Program .....	109
12.3	Progress reports .....	110
12.4	Subcontracting.....	110
12.5	Signage .....	111
<b>13.</b>	<b>Design.....</b>	<b>112</b>
13.1	Design warranties .....	112
13.2	Preparation of Design Documentation .....	113
13.3	Preconditions to commencement of construction .....	114
13.4	No obligation to review.....	114
13.5	Resolution of ambiguities.....	114
13.6	Concept Design .....	115
13.7	Performance Specification design changes .....	115
<b>14.</b>	<b>Construction.....</b>	<b>117</b>
14.1	Construction .....	117
14.2	Independent Verifier's review of construction .....	117
14.3	Defects in respect of the Tollroad .....	119
14.4	Accommodation Works.....	119
14.5	Progressive completion and handover of Returned Works.....	119
<b>15.</b>	<b>Time .....</b>	<b>121</b>
15.1	Commencement .....	121
15.2	Dates for completion.....	121
15.3	Acceleration.....	121
15.4	Delays .....	122
15.5	Corrective action plan .....	122
<b>16.</b>	<b>Completion .....</b>	<b>123</b>
16.1	General acknowledgements .....	123
16.2	Notice before Completion .....	123
16.3	Tollroad Completion and Tolling System Completion.....	123
16.4	Effect of Certificate of Completion.....	125
16.5	NB Practical Completion.....	126
16.6	EWAG Practical Completion .....	126
<b>17.</b>	<b>Close-Out.....</b>	<b>127</b>
17.1	Close-Out .....	127
17.2	Effect of Certificate of Close-Out.....	128
<b>18.</b>	<b>Defects for Returned Facilities.....</b>	<b>129</b>
18.1	Correction of Defects .....	129
18.2	Defects Liability Periods.....	129
18.3	Failure to comply with direction.....	130
18.4	Rights not affected.....	130
<b>19.</b>	<b>O&amp;M Phase .....</b>	<b>130</b>
19.1	Obligation to operate, maintain and repair .....	130
19.2	Opening of Tollroad .....	132
19.3	TQ Operations to keep Tollroad open .....	132
19.4	Performance of O&M Activities .....	133

19.5	O&M Manuals .....	133
19.6	Maintenance budget .....	135
19.7	Maintenance and Repairs Account .....	136
19.8	Forecast Maintenance Program .....	136
19.9	Reports .....	137
19.10	Failure to comply with O&M obligations .....	137
19.11	Operating qualifications .....	137
19.12	Replacement of O&M Contractor .....	138
19.13	Notice of damage and accidents .....	139
19.14	Advertising signage .....	139
19.15	Key performance indicators .....	140
<b>20.</b>	<b>Tolling and Customer service .....</b>	<b>143</b>
20.1	Levying of Tolls .....	143
20.2	Commencement of Tolling .....	144
20.3	Sources of revenue and returns .....	144
20.4	No other fees and charges .....	145
20.5	Tolling System .....	145
20.6	Interoperability .....	145
20.7	Customer Service Roll Out Program .....	146
20.8	Customer Service Roll Out .....	147
20.9	Amendment to Customer Service Roll Out Program .....	148
20.10	Customer Services .....	148
20.11	Tolling Products .....	149
20.12	Customer Contracts .....	151
20.13	Dealing with Customer Complaints .....	153
20.14	Customer Services and Customer Complaints reports .....	154
20.15	Customer Service Audit .....	154
20.16	Preferred Tollroad Service Provider .....	156
20.17	Tollroad Systems Supplier .....	157
<b>21.</b>	<b>Interaction with transport network.....</b>	<b>158</b>
21.1	No restrictions .....	158
21.2	Principal Traffic Connections .....	159
21.3	Proximate Work .....	159
<b>22.</b>	<b>Modifications .....</b>	<b>161</b>
22.1	Modifications proposed by the State .....	161
22.2	Modifications proposed by a PPP Co .....	169
22.3	Pre-Agreed Modifications .....	173
<b>23.</b>	<b>Payments and revenue upside .....</b>	<b>175</b>
23.1	Additional rent .....	175
23.2	Compensable Enhancements .....	177
23.3	Interest .....	181
23.4	Set-off .....	181
23.5	GST .....	181
23.6	General liability for duties and similar taxes .....	183
23.7	Land Based Rates and Taxes .....	184
23.8	Community Infrastructure Payment .....	184
23.9	Interest Rate Refinancing Gain .....	184
<b>24.</b>	<b>PPP Cos' risks .....</b>	<b>184</b>
<b>25.</b>	<b>Changes in Law .....</b>	<b>185</b>

<b>26.</b>	<b>Material Adverse Effect regime .....</b>	<b>185</b>
26.1	Possible MAE Events .....	185
26.2	PPP Cos to notify the State of Possible MAE Events .....	186
26.3	Time limit .....	186
26.4	Occurrence of Possible MAE Event .....	186
26.5	Good faith negotiations .....	186
26.6	Objectives of negotiations .....	187
26.7	Methods of redress .....	187
26.8	Contribution is last resort .....	187
26.9	Disputes .....	188
26.10	No over compensation .....	188
26.11	Implementation of redress .....	188
26.12	Termination for Uninsurable Force Majeure Event .....	188
26.13	Negative Compensable Enhancement.....	188
<b>27.</b>	<b>Force Majeure.....</b>	<b>189</b>
27.1	Force Majeure Events.....	189
27.2	Notification.....	190
27.3	Meeting.....	190
27.4	Suspension of obligations .....	190
27.5	Best endeavours to mitigate effect.....	191
27.6	Alternative arrangements.....	191
27.7	Cessation of Force Majeure Event.....	191
27.8	No financial relief to the PPP Cos .....	191
27.9	No compensation to the State.....	191
<b>28.</b>	<b>Property damage.....</b>	<b>192</b>
28.1	Risk of loss or damage .....	192
28.2	Reinstatement .....	192
28.3	Uninsurable Force Majeure Events .....	194
28.4	Damage to third party property .....	194
<b>29.</b>	<b>Indemnities .....</b>	<b>194</b>
29.1	Indemnity for each PPP Co's breach .....	194
29.2	General indemnity.....	195
29.3	Exclusion for certain third party claims.....	195
29.4	Obligations not affected .....	195
29.5	Responsibilities as if owner.....	195
<b>30.</b>	<b>Insurance.....</b>	<b>195</b>
30.1	D&C Phase insurances.....	195
30.2	O&M Phase insurances .....	197
30.3	Periods of insurance .....	198
30.4	General insurance requirements.....	198
30.5	Premiums .....	200
30.6	Evidence of insurance .....	200
30.7	Failure to produce evidence of insurance .....	200
30.8	Each PPP Co's obligations not limited .....	200
30.9	General insurance obligations.....	201
30.10	Uninsurable risks .....	201
30.11	Review of O&M Phase insurances.....	201
30.12	Insurance proceeds .....	202
30.13	Notices of potential claims .....	203
<b>31.</b>	<b>Representations and warranties .....</b>	<b>203</b>

31.1	State representations and warranties.....	203
31.2	PPP Cos' representations and warranties.....	204
31.3	TQ Trustee representations and warranties.....	205
31.4	Repetition of representation and warranties.....	206
<b>32.</b>	<b>Each PPP Co to inform itself.....</b>	<b>206</b>
32.1	No representations from the State.....	206
32.2	Warranties by each PPP Co.....	207
32.3	Project Information.....	207
32.4	Non reliance.....	208
32.5	Release and indemnity.....	209
<b>33.</b>	<b>Restrictions on each PPP Co.....</b>	<b>209</b>
33.1	Restrictions on Business.....	209
33.2	Restrictions on acquisition of property and liabilities being incurred.....	209
33.3	Ring fencing.....	209
33.4	Plant and equipment.....	210
<b>34.</b>	<b>Assignment.....</b>	<b>210</b>
34.1	Assignment by a PPP Co.....	210
34.2	Debt Financier's Securities.....	210
34.3	Restrictions on sale, lease and parting with possession.....	211
34.4	Assignment by the State.....	211
34.5	Initial status of ownership.....	211
34.6	Restrictions on Share Capital Dealings.....	211
34.7	The State's right to withhold consent.....	213
34.8	Permitted Share Capital Dealing.....	213
34.9	Consent.....	214
<b>35.</b>	<b>Amendments to Project Documents.....</b>	<b>214</b>
35.1	The State's consent required.....	214
35.2	Notice of intended Amendment.....	214
35.3	The State's consent.....	215
<b>36.</b>	<b>Refinancings.....</b>	<b>215</b>
36.1	Restriction on refinancing.....	215
36.2	Initial information.....	215
36.3	Notice of intended Refinancing.....	215
36.4	The State consent to refinancing.....	216
36.5	Consent not to be unreasonably withheld.....	216
36.6	The State must consent to Assumed Refinancing.....	217
36.7	Incoming financier's obligation.....	217
36.8	Cost of the State review.....	217
36.9	Execution of agreements and provision of revised model.....	217
36.10	Refinancing Gain.....	218
<b>37.</b>	<b>Financial Model.....</b>	<b>218</b>
37.1	Changes to Financial Model.....	218
37.2	Financial Model to incorporate data.....	218
37.3	Checking and revising models.....	218
<b>38.</b>	<b>Records and reporting obligations.....</b>	<b>219</b>
38.1	Accounting Records.....	219
38.2	Cost to complete information.....	219
38.3	Financial statements.....	220
38.4	Model information.....	220

38.5	Other information .....	220
<b>39.</b>	<b>Intellectual Property Rights.....</b>	<b>221</b>
39.1	Warranties .....	221
39.2	Grant of licence for Project purposes .....	222
39.3	Grant of licence for other purposes .....	222
39.4	Licence fees .....	223
39.5	Licences not affected .....	223
39.6	Deliverables (other than the Tollroad Systems) .....	224
39.7	Indemnities .....	224
39.8	Moral rights.....	225
39.9	Third party materials .....	226
39.10	Survival of rights .....	227
<b>40.</b>	<b>Disclosure and publicity .....</b>	<b>227</b>
40.1	Disclosure by the State .....	227
40.2	Public disclosure .....	227
40.3	Disclosure by PPP Cos.....	228
40.4	Disclosure following Tolling System Completion .....	228
<b>41.</b>	<b>Default and Termination .....</b>	<b>229</b>
41.1	Events of Default in respect of a PPP Co.....	229
41.2	Notice of default.....	230
41.3	Termination by the State.....	232
41.4	Events of Default in respect of the State .....	232
41.5	Termination by the PPP Cos.....	233
41.6	No prejudice to right to damages .....	235
41.7	Payments on termination .....	235
41.8	No other termination rights.....	235
41.9	Waiver .....	235
<b>42.</b>	<b>Step-in by the State.....</b>	<b>236</b>
42.1	Notice from the State .....	236
42.2	Right to step-in .....	236
42.3	PPP Cos to assist the State .....	236
42.4	Cessation of step-in rights .....	236
42.5	The State not required to remedy breach.....	236
42.6	The relevant PPP Co must compensate the State .....	236
42.7	No liability .....	236
42.8	No limitation on other rights .....	237
<b>43.</b>	<b>Handover at end of Concession Period.....</b>	<b>237</b>
43.1	Obligations approaching end of Concession Period.....	237
43.2	Handover .....	238
43.3	If Close-Out has not occurred .....	239
43.4	Assistance in securing continuity .....	240
43.5	Non-frustration of handover .....	240
43.6	Power of Attorney .....	240
43.7	Inspection at end of Concession Period.....	240
<b>44.</b>	<b>Dispute resolution.....</b>	<b>242</b>
44.1	Procedure for resolving disputes.....	242
44.2	Negotiation .....	244
44.3	Expert determination.....	244
44.4	Selection of expert .....	244
44.5	Rules of expert determination .....	245

44.6	Expert finding.....	245
44.7	Liability of expert.....	245
44.8	Costs .....	246
44.9	Arbitration .....	246
44.10	Identity of arbitrator.....	246
44.11	Rules for conduct of arbitration .....	246
44.12	Place of expert determination or arbitration.....	246
44.13	Continue to perform .....	247
44.14	Summary or urgent relief .....	247
<b>45.</b>	<b>Notices and time bar .....</b>	<b>247</b>
45.1	Notices .....	247
45.2	Notices of Claims.....	248
45.3	Prescribed notices .....	248
45.4	Continuing events.....	249
45.5	Notice to each PPP Co .....	249
45.6	Notice by each PPP Co .....	249
<b>46.</b>	<b>Governing law and jurisdiction .....</b>	<b>249</b>
46.1	Governing law.....	249
46.2	Jurisdiction.....	250
<b>47.</b>	<b>Miscellaneous .....</b>	<b>250</b>
47.1	Entire Agreement.....	250
47.2	Further acts and documents .....	250
47.3	Survival of certain provisions; no merger .....	250
47.4	Waiver .....	251
47.5	Consents .....	251
47.6	Amendments .....	251
47.7	Expenses.....	251
47.8	Severance .....	251
47.9	No representation or reliance.....	251
47.10	Counterparts.....	252
47.11	Indemnities .....	252
47.12	Moratorium legislation.....	252
47.13	No agency .....	252
	<b>Schedule 1 (Conditions Precedent).....</b>	<b>253</b>
	<b>Schedule 2 (Form of Bond) .....</b>	<b>256</b>
	<b>Schedule 3 (Consumer Price Index).....</b>	<b>257</b>
	<b>Schedule 4 (Planning Approval) .....</b>	<b>259</b>
	<b>Schedule 5 (Certification Schedule).....</b>	<b>260</b>
	<b>Schedule 6 (Toll Calculation Schedule) .....</b>	<b>331</b>
	<b>Schedule 7 (Principal Traffic Connections) .....</b>	<b>334</b>
	<b>Schedule 8 (Additional rent proportions) .....</b>	<b>335</b>
	<b>Schedule 9 (Confidential Information) .....</b>	<b>336</b>
	<b>Schedule 10 (Expert Determination Agreement) .....</b>	<b>337</b>

<b>Schedule 11 (Expedited arbitration rules)</b> .....	<b>348</b>
<b>Schedule 12 (State Conditions)</b> .....	<b>351</b>
<b>Schedule 13 (Approved Advertising signage)</b> .....	<b>352</b>
<b>Schedule 14 (Not used)</b> .....	<b>353</b>
<b>Schedule 15 (Assumed Transport Network Enhancement)</b> .....	<b>354</b>
<b>Schedule 16 (Insurances - sums insured and deductibles)</b> .....	<b>361</b>
<b>Schedule 17 (KPI Assessment System)</b> .....	<b>364</b>
<b>Schedule 18 (Permitted Share Capital Dealings)</b> .....	<b>373</b>
<b>Schedule 19 (Terms of Perpetual Lease)</b> .....	<b>374</b>
<b>Schedule 20 (Excluded Intellectual Property Rights)</b> .....	<b>375</b>
<b>Schedule 21 (Pre-Agreed Modifications)</b> .....	<b>382</b>

## **List of Exhibits**

**Exhibit A - Performance Specification**

**Exhibit B - Planning Approval**

**Exhibit C - D&C Phase Insurances**

**Exhibit D - not used**

**Exhibit E - Pre-Agreed Modification drawings**

**Exhibit F - Project Information**

## **Project Deed made on 2 June 2008, as amended and restated**

**Parties**                    **The State of Queensland** c/- The State Representative, Airport Link Project, Floor 21, Terrica Place, 140 Creek Street, Brisbane, Queensland 4000 ("**the State**")

**APL Co Pty Limited** ACN 609 262 615 ("**TQ Operations**") and **TQ APL Asset Co Pty Limited** ACN 609 390 454 ("**TQ Trustee**") as trustee of the **TQ APL Asset Trust** ("**TQ Asset Trust**"), each of Level 23, Tower One, Collins Square, 727 Collins Street, Docklands, Victoria 3008 (each a "**PPP Co**" and together the "**PPP Cos**")

### **Background**

- A.            The State conducted a public tender process and selected the BrisConnections Parties as the preferred tenderer for the AL Project, the EWAG Project and the NB Project.
- B.            This deed sets out the terms on which:
- (a)            the State agreed to:
    - (i)            grant the BrisConnections Parties the Concession; and
    - (ii)            procure the design and construction of the State AL Works;
  - (b)            the BrisConnections Parties agreed to:
    - (i)            design and construct the PPP Co AL Works and procure that the Original NB Works Contractor design and construct the NB Works and the EWAG Works;
    - (ii)            procure that BC FinCo finances the AL Works;
    - (iii)            integrate and co-ordinate the design and construction of the PPP Co AL Works with the design and construction of the State AL Works and the NB Works;
    - (iv)            co-ordinate the design and construction of the AL Works and the NB Works with the design and construction of the EWAG Works;
    - (v)            commission the AL Works and procure that the Original NB Works Contractor commission the NB Works and the EWAG Works; and
    - (vi)            handover, and procure that the Original NB Works Contractor hand over, to the State:
      - A.            EWAG (other than BAC EWAG) on the Date of EWAG Practical Completion; and
      - B.            the Busway on the Date of NB Practical Completion;
  - (c)            BC Operations agreed to:
    - (i)            operate the Tollroad; and
    - (ii)            maintain and repair the Tollroad and the Maintained Non-Tollroad Works;

- (d) BC Trustee agreed to handover the Tollroad and the Maintained Non-Tollroad Works to the State at the end of the Concession Period; and
  - (e) the risks associated with the Projects were allocated as between the State and each BrisConnections Party.
- C. Pursuant to the Transaction Consent Deed, the State has consented to the Asset Disposal Agreement and the transactions contemplated by it.
- D. Pursuant to the State Project Documents Novation Deed, the PPP Cos have agreed to assume all of the obligations of the BrisConnections Parties, the Original State Works Contractor and the Original NB Works Contractor under certain State Project Documents including this deed and will be entitled to all of the rights of the BrisConnections Parties, the Original State Works Contractor and the Original NB Works Contractor under those State Project Documents including this deed, with effect on and from the Acquisition Date.
- E. Pursuant to the Lease Assignment and Assumption Deed, BC Trustee will assign to TQ Trustee its rights under the Agreement to Lease and the Lease, with effect on and from the Acquisition Date.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed:

**"Aboriginal Cultural Heritage"** has the meaning given to it in the *Aboriginal Cultural Heritage Act 2003* (Qld).

**"Accommodation Works"** means all works necessary to ensure that:

- (a) the amenity of;
- (b) access to and egress from; or
- (c) the functionality of,

any property (including any structure thereon), including such property located outside of the Licensed Construction Areas, which is affected by the D&C Activities is maintained to at least the standard that it was in immediately prior to the date of this deed including:

- (d) fences to separate the property located outside of the Licensed Construction Areas from property located within the Licensed Construction Areas;
- (e) access routes;
- (f) drainage structures; and
- (g) landscaping and reinstatement works.

**"Account Bank Undertaking"** means the document entitled "Account Bank Undertaking" dated on or about the Acquisition Date given by Australia and New Zealand Banking Group Limited ABN 11 005 357 522 in favour of the State.

**"Acquisition"** means:

- (a) the novation or assignment of each Key Project Document from the BCS Parties to the PPP Cos; and
- (b) the sale and purchase of the Assets from the BCS Parties to the PPP Cos,

where "Key Project Document", "BCS Parties" and "Assets" have the meaning given to those terms in the Asset Disposal Agreement.

**"Acquisition Date"** means the date on which "Completion" of the Acquisition occurs in accordance with clause 9 of the Asset Disposal Agreement.

**"Actual Debt"** means the indebtedness of the PPP Cos and FinCo under the Debt Financing Documents (without any double counting).

**"Administration Charge"** has the meaning given to that term in the Tolling Declaration.

**"AFC Design Documentation"** means the Design Documentation which each PPP Co is entitled to use for construction purposes under clause 13.3.

**"Affected Road"** means any road or road reserve which crosses, is adjacent to, or is affected in any way by, the Project Works.

**"Affected Road Works"** means the physical things and works which must be designed, supplied, constructed, installed, produced or completed in respect of the construction, modification, reinstatement or improvement of an Affected Road and handed over to the State or the relevant Facility Owner in accordance with this deed or the State Works Deed.

**"Agreed PW"** means Proximate Work associated, directly or indirectly, with:

- (a) the Northern Busway; or
- (b) the North-South Bypass Tunnel; or
- (c) the upgrade of the East-West Arterial between Sandgate Road and Airport Drive to 6 lanes, if the EWAG Works Deed is terminated.

**"Agreement to Lease"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - Deed of Agreement to Lease" between the State and BC Trustee dated the date of this deed and assigned to TQ Trustee on the Acquisition Date pursuant to the Lease Assignment and Assumption Deed.

**"Air Filtration Law"** means legislation of the Commonwealth of Australia or the State that:

- (a) expressly requires the installation of air filtration equipment for the purposes of either or both of the AL Project or the NB Project; or
- (b) can only be complied with by the installation of air filtration equipment for either or both of the AL Project or the NB Project.

**"AL Accommodation Works"** means those Accommodation Works that:

- (a) relate to any property which is affected by:
  - (i) the AL D&C Activities; or

- (ii) the AL D&C Activities and either the NB Project Activities or the EWAG Project Activities (or both); and
- (b) are not otherwise described in the Performance Specification as NB Accommodation Works or EWAG Accommodation Works.

**"AL Affected Road Works"** means those Affected Road Works that:

- (a) relate to an Affected Road which crosses, is adjacent to, or is affected in any way by:
  - (i) any of the AL Works; or
  - (ii) the AL Works and either the NB Works or the EWAG Works (or both); and
- (b) are not otherwise described in the Performance Specification as NB Affected Road Works or EWAG Affected Road Works.

**"AL D&C Activities"** means those D&C Activities in respect of the AL Project and includes the SWC D&C Activities.

**"AL Project"** means:

- (a) the financing, design, construction and commissioning of the AL Works;
- (b) the operation, maintenance and repair of the Tollroad;
- (c) the maintenance and repair of the Maintained Non-Tollroad Works;
- (d) the levying of Tolls and imposition of User Charges; and
- (e) the handover of the Tollroad to the State at the end of the Concession Period,

in accordance with this deed and the State Works Deed.

**"AL Project Activities"** means the Project Activities other than the EWAG Project Activities and the NB Project Activities and includes the AL D&C Activities and the O&M Activities.

**"AL Project and NB Project Design and Construction Environmental Management Plan"** means the Project Plans of that name referred to in Annexure 9 to the Performance Specification, the requirements for which appear as Annexure 11 to the Performance Specification and the initial AL Project and NB Project Design and Construction Environmental Management Plan appears in Part 2 of Annexure 9 of the Performance Specification.

**"AL PUP Works"** means those PUP Works that:

- (a) relate to a PUP that is adjacent to or is affected in any way by:
  - (i) any of the AL Works; or
  - (ii) the AL Works and either the NB Works or the EWAG Works (or both); and
- (b) are not otherwise described in the Performance Specification as NB PUP Works or the EWAG PUP Works.

**"AL Returned Works"** means those parts of:

- (a) the AL PUP Works;
- (b) the AL Affected Road Works; and
- (c) the AL Accommodation Works,

in respect of which there is a Facility Owner and which must be completed and progressively handed over in accordance with this deed and the State Works Deed.

**"AL Temporary Works"** means those Temporary Works that:

- (a) are required for or are affected in any way by:
  - (i) the AL D&C Activities; or
  - (ii) the AL D&C Activities and either the EWAG Project Activities or the NB Project Activities (or both); and
- (b) are not otherwise described in the Performance Specification as NB Temporary Works or EWAG Temporary Works.

**"AL Works"** means all of the Project Works, other than the EWAG Works and the NB Works, including:

- (a) the Tollroad;
- (b) the AL PUP Works;
- (c) the AL Affected Road Works;
- (d) the AL Accommodation Works; and
- (e) the AL Temporary Works.

**"AL Works Fire and Life Safety Design Plan"** means the Project Plans of that name referred to in Annexures 1 and 9 of the Performance Specification, the initial one of which appears in Part 2 of Annexure 9 of the Performance Specification.

**"Approval"** means the Planning Approval and any licence, permit, consent, approval, determination, certificate, clearance, permission or the like which is required to be issued by or obtained from any Authority or any other person or under any Law, or any requirement made under any Law which must be obtained or satisfied (as the case may be):

- (a) to perform the Project Activities;
- (b) in connection with the Projects or any Project Area; or
- (c) for the use of the Tollroad including for the continuous passage of vehicles after the Tollroad Opening Date.

**"Artefacts"** means any places, fossils, bones, artefacts, coins, articles of antiquity, buildings, structures, natural features or other remains or objects or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or archaeological interest or things otherwise of significance, including any items of cultural heritage significance and Aboriginal Cultural Heritage.

**"Asset Disposal Agreement"** means the agreement entitled "Asset Disposal Agreement Airportlink M7 Tollroad" between the PPP Cos, the BrisConnections Parties and others dated 24 November 2015.

**"Associates"** means, in relation to a person, any Related Body Corporate or Related Trust Entity of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that person or that Related Body Corporate or Related Trust Entity and:

- (a) in the case of each PPP Co, includes the other PPP Co, the State Works Contractor, the NB Works Contractor, FinCo, the D&C Contractor, the O&M Contractor, the Equity Investors, and their respective Associates (but does not include the State or any of its Associates); and
- (b) in the case of the State, does not include the PPP Cos, the State Works Contractor, the NB Works Contractor or any of their respective Associates.

**"Assumed Refinancing"** means a Refinancing which is specifically taken into account in the Base Case Financial Model and which complies with or does not contravene the Refinancing Assumptions (including as to timing, tenor and margins).

**"Assumed Transport Network Enhancement"** means a transport network enhancement referred to in Schedule 15.

**"Assumptions Book"** means, with respect to a model, the assumption book provided as part of that model under clause 2 (and item 7 of Schedule 1), as may be amended from time to time with the consent of the State.

**"Authority"** means:

- (a) any government or any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
- (b) any person having jurisdiction over, or ownership of, the PUP Works.

**"BAC"** has the meaning given to it in the EWAG Works Deed.

**"BAC Consent Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects – BAC Consent Deed" between BAC, TQ Operations, the Security Trustee and others dated on or about the date of the Security Trust Deed.

**"BAC EWAG"** has the meaning given to it in the EWAG Works Deed.

**"BAC Land"** has the meaning given to it in the EWAG Works Deed.

**"Base Case Equity Return"** means the nominal after tax internal rate of return to the Equity Investors which the Group is projected to generate (which, for the avoidance of doubt, is after tax paid or payable on project cashflows, and is before any tax paid or payable by the Equity Investor) from the Acquisition Date until the end of the Concession Period (assuming no circumstance of early termination or extension), as described in the Base Case Financial Model.

**"Base Case Financial Model"** means the financial model for the AL Project from the Acquisition Date to the end of the Concession Period (assuming no circumstance of early termination or extension), and the relevant Assumptions Books and other assumptions and information, data files, run specification files and output analysis routines used by or incorporated in the financial model, approved by the State in connection with the Acquisition (as revised in accordance with clause 36.9 to reflect any Refinancing).

**"BBSY"** means the rate expressed as a percentage per annum:

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

**"BC FinCo"** means BrisConnections Finance Pty Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) ACN 128 629 676.

**"BC Operations"** means BrisConnections Operations Pty Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) ACN 128 615 547.

**"BC Trustee"** means BrisConnections Nominee Company Pty Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) ACN 128 615 814 (as trustee for the BrisConnections Asset Trust).

**"Beneficiaries"** has the meaning given to it in clause 39.8.

**"Bond"** means the D&C Bond, the EWAG Bonds, the NB Bonds, the O&M Bond, the Handover Bond and any replacement bond provided under clauses 5.3, 5.5, 5.8(b)(ii) or 5.8(c)(ii).

**"BrisConnections Parties"** means BC Operations and BC Trustee.

**"Business Day"** means:

- (a) when used in clause 45, a day in the place where the communication is received which is not a Saturday, Sunday or a public holiday and on which banks are generally open for business; and
- (b) when used in any other clause, a day in Brisbane that is not a Saturday, Sunday or a public holiday on which banks are generally open for business.

**"Business Hours"** means between 9:00 am and 5:00 pm on a Business Day.

**"Busway"** means the following sections of the Northern Busway (Windsor to Kedron):

- (a) the Federation Street Connection;
- (b) the bus lanes on Truro Street between Albion Road and Stoneleigh Street;
- (c) the two lane, two-way grade separated busway between Stoneleigh Street and Gympie Road to the north of and grade separated from Stafford Road transitioning to kerbside running in the vicinity of Somerset Road and Sadlier Street, Kedron, that is independent of the road network and provided for the sole operation of buses and emergency services agencies' vehicles in emergencies,

and incorporating:

- (d) busway stations at Lutwyche and Kedron Brook;

- (e) inbound and outbound bus stops at Federation Street, Truro Street and Gympie Road; and
- (f) all of the road, bus accesses, tunnel and other physical works, facilities, systems and Public Utility Plant described as being required for the Busway in the Performance Specification (including section 1.4.1 of Annexure 1 of the Performance Specification),

and located within the Busway Area and being the NB Works (other than the NB Returned Works and the NB Temporary Works).

**"Busway Area"** means the land described as such in the Site Access Schedule.

**"CDIMP"** means the document titled "Northern Busway Concept Design and Impact Management Plan Royal Childrens Hospital to Kedron" dated May 2007.

**"Certificate of Close-Out"** means a certificate substantially in the form required by the Certification Schedule certifying that Close-Out has been achieved.

**"Certificate of EWAG Practical Completion"** means a certificate substantially in the form required by the Certification Schedule certifying that EWAG Practical Completion has been achieved.

**"Certificate of NB Practical Completion"** means a certificate substantially in the form required by the Certification Schedule certifying that NB Practical Completion has been achieved.

**"Certificate of Tolling System Completion"** means a certificate substantially in the form required by the Certification Schedule certifying that Tolling System Completion has been achieved.

**"Certificate of Tollroad Completion"** means a certificate substantially in the form required by the Certification Schedule certifying that Tollroad Completion has been achieved.

**"Certification Schedule"** means Schedule 5.

**"Change in Air Filtration Law"** means:

- (a) a change in an Air Filtration Law existing at the date of this deed;
- (b) the enactment of a new Air Filtration Law; or
- (c) a change in the interpretation or application of an Air Filtration Law, brought about by:
  - (i) the amendment, repeal or change of legislation existing at the date of this deed; or
  - (ii) the enactment of new legislation,

which directly affects the interpretation or application of the Air Filtration Law,

which requires a material change to the Project Works, the Tollroad or the Project Activities other than as a result of a breach of the Planning Approval or a State Project Document by a PPP Co or its Associates or any change to the Projects proposed by a PPP Co and agreed by the State under clause 22.2.

**"Change to Planning Approval"** means at any time:

- (a) the Planning Approval is modified from that which is in force immediately before that time;
- (b) a Coordinator-General's Change Report is issued;
- (c) the Coordinator-General or the State issues a new Approval in respect of the Tollroad in substitution for or replacement of the Planning Approval; or
- (d) any such new Approval is modified,

which requires a Modification other than as a result of a breach of the Planning Approval or a State Project Document by a PPP Co or its Associates or any change to the Projects proposed by a PPP Co and agreed by the State under clause 22.2.

**"Claim"** includes any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, the State Project Documents;
- (b) arising out of, or in any way in connection with, the Projects or any party's conduct prior to the date of this deed; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution, including restitution based on unjust enrichment,

but does not include any claim, action, demand or proceeding by an entity (other than a PPP Co or its Associates), arising solely out of, or in connection with, the conduct of the State or its Associates prior to the date of this deed.

**"Close-Out"** means the stage when:

- (a) the balance of the AL Works not completed as part of Tollroad Completion or Tolling System Completion have been completed including correcting all Defects in the AL Works specified in the Certificate of Tollroad Completion or the Certificate of Tolling System Completion;
- (b) subject to clause 16.6(c), the balance of the EWAG Works not completed as part of EWAG Practical Completion have been completed including correcting all Defects in the EWAG Works specified in the Certificate of EWAG Practical Completion;
- (c) subject to clause 16.5(c), the balance of the NB Returned Works not completed as part of NB Practical Completion have been completed including correcting all Defects in the NB Returned Works specified in the Certificate of NB Practical Completion; and
- (d) each PPP Co and the State Works Contractor have done everything which this deed (including the Performance Specification) and the State Works Deed requires the PPP Cos or the State Works Contractor to do as a condition precedent to Close-Out.

**"Community and Consultation Management Plan"** means the Project Plans relating to community consultation and communications referred to in Annexures 6 and 9 to the

Performance Specification, and the initial Community and Consultation Management Plan appears in Part 2 of Annexure 9 to the Performance Specification.

**"Compensable Enhancement"** has the meaning given to it in clause 23.2(b)(i).

**"Competing Tunnel"** means a new road tunnel other than Northern Busway or any other road tunnel dedicated exclusively for public transport, which directly connects Bowen Hills to Gordon Park and/or Gordon Park to Toombul and/or Bowen Hills to Toombul.

**"Concept Design"** means the concept design for the AL Works and the NB Works in Part 2 of Annexure 1 of the Performance Specification.

**"Concession"** means the right to:

- (a) design, construct and commission the Project Works;
- (b) operate, maintain and repair the Tollroad and the Maintained Non-Tollroad Works; and
- (c) levy Tolls and impose User Charges for or in connection with the use of the Tollroad.

**"Concession Period"** means the period beginning on the date of this deed and ending on the earlier of the dates referred to in clause 3.2.

**"Condition Precedent"** means a condition precedent set out in Schedule 1.

**"Condition Precedent Deadline Date"** means, in respect of a Condition Precedent, the date specified next to that Condition Precedent in Schedule 1, or such other date as the parties may agree.

**"Construction Site"** means:

- (a) the Licensed Construction Areas;
- (b) any Extra Land; and
- (c) all other areas upon which the D&C Activities (other than design work) are being carried out or materials are being prepared or stored.

**"Construction Traffic Management Plan"** means the Project Plans relating to construction traffic management referred to in Annexures 9 of the Performance Specification.

**"Constructional Plant"** means equipment, appliances and things used in the execution of the D&C Activities but not forming part of the Project Works.

**"Consumer Price Index" or "CPI"** has the meaning given to it in Schedule 3.

**"Contamination"** means the presence on, in, over, or under land (including both surface and ground water and air) of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally or naturally present on, in, over, or under that land (including both surface and ground water) or land or waters in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment and **"Contaminant"** has a like meaning.

**"Contamination Notice"** means a notice or direction given, or purporting to have been given, under any Law which requires the person to whom it is issued to take action to investigate,

remediate or manage Contamination and includes a site investigation notice, remediation notice and requirement to prepare a site management plan.

**"Control"** has the meaning given to it in section 50AA of the Corporations Act.

**"Controller"** has the meaning given to it in the Corporations Act.

**"Controlling Unit Holder"** means, in respect of any trust or managed investment scheme, any entity which:

- (a) Controls the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);
- (b) is in a position to cast, or Control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
- (c) holds more than one half of the units in the trust or managed investment scheme.

**"Coordinator-General"** has the meaning given to it in the *State Development & Public Works Organisation Act 1971* (Qld).

**"Coordinator-General's Change Report"** means an evaluation report prepared by the Coordinator-General pursuant to section 35I of the *State Development & Public Works Organisation Act 1971* (Qld) in response to a proposed change to the AL Project or a condition of the AL Project as evaluated in the Coordinator-General's Report.

**"Coordinator-General's Report"** means the report entitled "Coordinator General's Report on the Environmental Impact Statement for the proposed Airport Link Project" dated May 2007. A copy of the Coordinator-General's Report appears as Exhibit B.

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

**"Council"** means the Brisbane City Council, a statutory corporation constituted under the *City of Brisbane Act 1924* (Qld).

**"Counterparty Details"** means, in respect of each person other than the State who is a party to a State Project Document:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee, a certified copy of the trust deed of the trust it enters into the State Project Document as trustee for;
- (c) a certified copy of any powers of attorney under which the person executed each State Project Document to which it is a party; and
- (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each State Project Document to which it is a party.

**"Cultural Heritage Management Plan"** means the plan or plans entered into between the State and the Jagera and Turrbal peoples (being the registered native title claimants for the Project Areas) pursuant to Part 7 of the *Aboriginal Cultural Heritage Act 2003* (Qld) in respect of the Project Areas.

**"Current Project Payments"** means, in respect of any Payment Period, as at the Payment Date:

- (a) the amounts due and payable by TQ Operations to third parties but not yet paid, or accrued during that Payment Period but not yet due and payable, in respect of performing the O&M Activities during that Payment Period (other than discretionary capital expenditure not committed before the start of the Payment Period and not included in the calculation of the required balance of the Maintenance & Repairs Account for the Payment Period unless otherwise agreed with the State for the purposes of this definition);
- (b) the amounts due and payable by FinCo but not yet paid in respect of Actual Debt under the Debt Financing Documents in respect of the Payment Period; and
- (c) any amounts due and payable by a PPP Co to the State under the State Project Documents but not yet paid in respect of the Payment Period, but excluding any amounts payable by a PPP Co in connection with any failure of a PPP Co to comply with its obligations under a Project Document.

**"Customer"** means, at any time:

- (a) in respect of TQ Operations, any person who is then registered with or party to an arrangement with TQ Operations, the Preferred Tollroad Service Provider or any Related Body Corporate of TQ Operations or the Preferred Tollroad Service Provider governing the arrangements for use of, or the entitlement to use the Tollroad or any part of the Tollroad by one or more vehicles in accordance with the terms of that arrangement; and
- (b) in respect of another Tollroad Service Provider, any person who is then registered with or is a party to an arrangement with that Tollroad Service Provider governing the arrangements for the use of, or the entitlement to use the relevant tollroad by one or more vehicles in accordance with the terms of that arrangement.

**"Customer Complaint"** has the meaning given to it in clause 20.13.

**"Customer Contract"** means in respect of a tolling product, the contract that complies with clause 20.12(a)(i).

**"Customer Contract Amendment"** has the meaning given to it in clause 20.12(d)(i).

**"Customer Service Audit"** has the meaning given to it in clause 20.15(a).

**"Customer Service Auditor"** has the meaning given to it in clause 20.15(b)(i).

**"Customer Service Practice Requirements"** means the provision of customer services adopting practices required to achieve a result consistent with Law, reliability, safety, consumer protection and the requirements of this deed, including everything necessary to ensure that the principle of continuous improvement is adhered to, including continually improving the accuracy, standards and quality of Customer Services to a standard at least equivalent to the standard at which other services in other sectors are typically provided to the general public at large.

**"Customer Service Roll Out Program"** means a detailed program which complies with clause 20.7(b) and addresses the concerns (if any) raised by the Independent Verifier in any notice given by the Independent Verifier under clause 20.8(b).

**"Customer Services"** has the meaning given to it in clause 20.10.

**"D&C Activities"** means all things the relevant PPP Co, the State Works Contractor or the NB Works Contractor is, or may be, required to carry out or do:

- (a) in connection with the design and construction of the Project Works; or
- (b) otherwise to comply with their obligations under the State Project Documents with respect to the Project Works,

and includes:

- (c) the PPP Co AL D&C Activities;
- (d) the EWAG Project Activities;
- (e) the NB Project Activities; and
- (f) the SWC D&C Activities.

**"D&C Best Practices"** means design, construction, commissioning and repair practices performed with the due skill, care and diligence which may reasonably be expected of a skilled professional suitably qualified in the performance of obligations similar to the relevant PPP Co's obligations under the State Project Documents so as to achieve a result consistent with Law, reliability, safety, protection of the Environment and the requirements of the State Project Documents. It includes everything reasonably necessary to ensure that:

- (a) the Project Works are designed and constructed in a manner safe to all people and the Environment;
- (b) the Project Works are constructed as designed;
- (c) the Project Works are designed and constructed to ensure reliable long term and safe operation and the D&C Activities are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (d) sufficient personnel are available and are adequately experienced and trained to carry out the D&C Activities;
- (e) adequate materials, resources and supplies are available to ensure compliance with requirements of the State Project Documents under normal conditions and reasonably anticipated at normal conditions; and
- (f) the principle of continuous improvement is adhered to, that is, a commitment to continually improving the standards and quality of the design and construction of the Project Works and the manner in which the D&C Activities are carried out including ensuring the design and construction of the Project Works is carried out in a manner which at all times remains consistent with the overall road network standards.

**"D&C Bond"** means the bond or bonds referred to in clause 5.1(a) and any bond accepted in substitution for or replacement of that bond or those bonds.

**"D&C Consent Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects – D&C Consent Deed" between the D&C Contractor, each PPP Co, the Security Trustee and others dated on or about the date of the Security Trust Deed.

**"D&C Contract"** means the Original D&C Contract and any other contract between each PPP Co, the State Works Contractor and the NB Works Contractor (as joint principals) and a D&C Contractor for the design and construction of the Project Works.

**"D&C Contractor"** means the Original D&C Contractor and any person who in addition or substitution is engaged by the PPP Cos, the State Works Contractor and the NB Works Contractor (as joint principals) to undertake all, or substantially all, of the D&C Activities.

**"D&C Guarantee"** means the guarantee given by the D&C Guarantor in favour of the PPP Cos and the Security Trustee in the document entitled "D&C Guarantee and Bonding Deed" dated on or about the Acquisition Date and any other guarantee given by a D&C Guarantor to the PPP Cos in respect of the obligations of a D&C Contractor to the PPP Cos under a D&C Contract.

**"D&C Guarantor"** means CIMIC Group Limited ABN 57 004 482 982 and any person who in addition or substitution guarantees the obligations of a D&C Contractor under a D&C Contract.

**"D&C IP Licence Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects – D&C IP Licence Deed" between each BrisConnections Party and the D&C Contractor dated the date of this deed and novated to the PPP Cos on the Acquisition Date.

**"D&C Phase"** means the period between the date of this deed and the Last DLP.

**"D&C Phase Insurances"** means the Insurances referred to in clause 30.1.

**"D&C Program"** means the program at Part 2 of Annexure 8 to the Performance Specification, as updated in accordance with clause 12.2.

**"D&C Side Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - D&C Side Deed" between the State, each BrisConnections Party, the Original State Works Contractor, the Original NB Works Contractor, the Original D&C Contractor, the Original D&C Guarantor and the Independent Verifier dated on 25 July 2008 and novated to the PPP Cos on the Acquisition Date.

**"Date for Close-Out"** means 6 months after the Date of Tolling System Completion.

**"Date for EWAG Practical Completion"** has the meaning given to it in the EWAG Works Deed.

**"Date for EWAG Final Completion"** has the meaning given to it in the EWAG Works Deed.

**"Date for NB Final Completion"** has the meaning given to it in the NB Works Deed.

**"Date for Tollroad Completion"** means 47 months after the date of Financial Close.

**"Date of Close-Out"** means 16 September 2015.

**"Date of EWAG Final Completion"** means 2 July 2012.

**"Date of EWAG Practical Completion"** means 1 July 2011.

**"Date of NB Final Completion"** means 7 November 2012.

**"Date of NB Practical Completion"** means 30 April 2012.

**"Date of Tolling System Completion"** means 23 July 2012.

**"Date of Tollroad Completion"** means 23 July 2012.

**"Debt Finance Side Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - Debt Finance Side Deed" between the State, each PPP Co, FinCo and the Security Trustee dated on or about the date of the Security Trust Deed.

**"Debt Financiers"** means the providers of any Debt Financing Facilities from time to time and may, where the context permits, include any agent or trustee of such Debt Financiers.

**"Debt Financing Documents"** means:

- (a) the Syndicated Facilities Agreement between FinCo and the Security Trustee, among others, dated on or about the date of the Security Trust Deed;
- (b) the Security Trust Deed;
- (c) the Financiers' Securities (as defined in the Debt Finance Side Deed);
- (d) the transactions entered into with the Debt Financiers pursuant to the hedging arrangements (including any Hedge Agreement and each ISDA Master Agreement and Schedule to it) (as defined in the Security Trust Deed);
- (e) each Subordination Deed to be executed by providers of Shareholder Debt (as defined in the Security Trust Deed);
- (f) the Common Terms Deed (as defined in the Syndicated Facilities Agreement);
- (g) the MSA Tripartite (as defined in the Security Trust Deed);
- (h) the D&C Consent Deed;
- (i) the D&C Guarantee;
- (j) the O&M Consent Deed;
- (k) the O&M Guarantee;
- (l) the BAC Consent Deed;
- (m) the Debt Finance Side Deed;
- (n) the Deed of Appointment of Financier's Engineer;
- (o) the Tolling Services Agreement Tripartite (as defined in the Security Trust Deed);
- (p) the Fee Letters to be entered into with the Debt Financiers, the Facility Agent (as defined in the Syndicated Facilities Agreement) and the Security Trustee in connection with the Debt Financing Facilities;
- (q) any document entered into in relation to a Refinancing of the Actual Debt approved by the State in accordance with clause 35; and
- (r) any other documents (including any Finance Documents as defined in the Syndicated Facilities Agreement) which the parties agree is a Debt Financing Document for the purposes of this deed.

**"Debt Financing Facilities"** means the facilities, financial arrangements or accommodation provided, in accordance with the Debt Financing Documents, to FinCo or a PPP Co for the purposes of financing the Acquisition and the carrying out of the AL Project.

**"Decision Date"** has the meaning given to it in the EWAG Works Deed.

**"Deed of Appointment of Financier's Engineer"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects – Deed of Appointment of Financier's Engineer" between each BrisConnections Party, the Original State Works Contractor, the Original NB Works Contractor, the D&C Contractor, APP Corporation Pty Ltd, the Original Agent and the Original Security Trustee, among others, dated on 25 July 2008 and novated to the PPP Cos, the Security Trustee and Westpac Banking Corporation ABN 33 007 457 141 as the "Agent" on the Acquisition Date.

**"Deeds of Disclaimer"** means:

- (a) the deed polls so entitled given by the BrisConnections Parties, BrisConnections Contracting Pty Limited and Northern Busway Contracting Pty Limited in favour of the State on or about 14 December 2007; and
- (b) the deed polls so entitled given by each Consortium Member and each Responsible Entity (as those terms are defined with respect to BrisConnections in the Request for Proposal) in favour of the State on or about 14 December 2007, as required by clause 12.16 of the Request for Proposal.

**"Defect"** means:

- (a) any defect, shrinkage, movement, deficiency, subsidence, fault or omission in the Project Works, EWAG, the Busway, the Tollroad or the Maintained Non-Tollroad Works, whether in respect of, or arising from any cause including, design, materials, or workmanship;
- (b) any other aspect of the Project Works, EWAG, the Busway, the Tollroad or the Maintained Non-Tollroad Works which is not in accordance with the requirements of this deed, the EWAG Works Deed and the NB Works Deed; or
- (c) any physical damage to the Project Works, EWAG, the Busway, the Tollroad or the Maintained Non-Tollroad Works resulting from such defect, shrinkage, movement, deficiency, subsidence, fault, omission or non-compliance.

**"Defects Liability Period"** means a period referred to in clause 18.2.

**"Deliverable"** means the AL Works, the Tollroad (including the Tolling System), the Proprietary Material and any other deliverable required to be delivered or goods or services required to be provided by or for a PPP Co or the State Works Contractor to the State under this deed (or any part of any of them).

**"Design and Construction Environmental Management Plan"** means the Project Plans relating to design and construction environmental management referred to in Annexure 9 of the Performance Specification, including the AL Project and NB Project Design and Construction Environmental Management Plan.

**"Design Documentation"** means all design documentation (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which a PPP Co, the State Works Contractor, the NB Works Contractor or any other person creates, or is required to, or must necessarily, create, in performing the D&C Activities (including the design of the Temporary Works).

**"Designer"** means the person engaged or appointed by the D&C Contractor to undertake the design of the Project Works.

**"Designer Direct Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - Designer Direct Deed" between the State, each BrisConnections Party, the Original State Works Contractor, the Original NB Works Contractor, the Original D&C Contractor, the Designer, the Independent Verifier and the Qualified Fire Engineer dated on 25 July 2008 and novated to the PPP Cos on the Acquisition Date.

**"Direct Interface Agreements"** means:

- (a) the Rail Interface Agreement; and
- (b) the EWAG Interface Agreement.

**"Discriminatory Change in State Law"** means:

- (a) the amendment, repeal or change of a State Law (not including any amendment or change in an Approval resulting from any direct or indirect action of a PPP Co in accordance with this deed including any Modification requested by a PPP Co) existing at the date of this deed;
- (b) the enactment of a new State Law; or
- (c) a change in the interpretation or application of an existing State Law, brought about by:
  - (i) the amendment, repeal or change of another State Law; or
  - (ii) the enactment of a new State Law,

which directly affects the interpretation or application of the first mentioned existing State Law,

and which specifically and only:

- (d) affects the AL Project; or
- (e) has a direct effect upon the AL Project together with other privately owned and operated toll roads in Queensland.

**"Dispute"** has the meaning given to it in clause 44.1.

**"Distribution"** means, without double counting, any:

- (a) dividend, return of capital, or other distribution or payment (in cash or in kind) in respect of the share capital or units of a Group Member or shareholder loans (or other loans in the nature of equity funding) to, or for the benefit of, a Group Member;
- (b) release by a Group Member of any actual or contingent liability of any Holding Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor);
- (c) payment, loan or transfer of any assets by a Group Member to any Equity Investor (or any Related Body Corporate or Related Trust Entity of any Equity Investor) which is not on arm's length commercial terms; or
- (d) surrender by a PPP Co of losses or other amounts available for group relief unless full payment of an amount equal to the amount surrendered multiplied by the corporate tax rate is made at the date of the surrender.

**"Documentation Schedule"** means Attachment 2 to Annexure 9 Part 1 of the Performance Specification.

**"Early Termination Amount"** on any date:

- (a) is the total of:
  - (i) the Project Debt on that date; and
  - (ii) an amount sufficient to give each PPP Co the ability to give the Equity Investors (treated as if those Equity Investors were all Notional Initial Equity Investors) a nominal after tax internal rate of return to that date equal to the Equity Return on amounts invested by Notional Initial Equity Investors in respect of the Concession, having regard to:
    - A. amounts which were generated by the Group and received by or paid to the Notional Initial Equity Investors, up to the date of termination;
    - B. amounts that each PPP Co or the State Works Contractor must pay as a consequence of the termination (but excluding any amounts payable by a PPP Co or the State Works Contractor which relate to amounts payable by the D&C Contractor or the O&M Contractor to a Related Body Corporate of the D&C Contractor or a Related Body Corporate of the O&M Contractor, to the extent that the Related Body Corporate is not engaged on arm's length commercial terms); and
    - C. any amounts that the State is obliged to pay to the State Works Contractor under the State Works Deed or any Law;
- (b) does not include any interest on the Project Debt to the extent that it is calculated at a rate which would constitute a penalty; and
- (c) does not include any amount included in the calculation of the NB Termination Amount or the EWAG Termination Amount.

**"Easements"** means those easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges in each case as are granted at the date of the Agreement to Lease and those contemplated by clause 7 (Easements and other rights) of the Lease and clause 10 (Easements) of the Agreement to Lease, which benefit or burden the Leased Area or the Licensed Maintenance Areas.

**"EIS"** means the environmental impact statement issued pursuant to the *State Development and Public Works Organisation Act 1971* (Qld) comprising the documents prepared by the joint venture between Sinclair Knight Merz Pty Ltd and Connell Wagner Pty Ltd and entitled:

- (a) "Airport Link – Environmental Impact Statement" dated October 2006; and
- (b) "Airport Link – Environmental Impact Statement Supplementary Report" dated April 2007.

**"Election Date"** means the date specified as the "Election Date" in the Pre-Agreed Modification Schedule in respect of a Pre-Agreed Modification.

**"Environment"** includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) to (c).

**"Environmental Documents"** means:

- (a) the Planning Approval; and
- (b) Annexure 11 to the Performance Specification.

**"Environmental Hazard"** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

**"Equity Commitment Deed"** means the document entitled "Equity Commitment Deed Poll" between Transurban Holdings Limited ACN 098 143 429, Transurban Infrastructure Management Limited ABN 27 098 147 678 as responsible entity of Transurban Holding Trust, AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper and Tawreed Investments Limited dated 23 November 2015.

**"Equity Documents"** means:

- (a) the Equity Commitment Deed;
- (b) the Subscription Agreement;
- (c) the Loan Note Subscription Deed between AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper, AS Finance Company Pty Ltd ACN 610 708 435 and AS Infrastructure No. 2 (Operating) Pty Ltd as trustee for AS Infrastructure No. 2 (Operating) Trust ACN 169 017 887 dated on or about the Acquisition Date, and each Loan Note Deed Poll entered into pursuant to that document;
- (d) the Loan Note Subscription Deed between Transurban Queensland Holdings 1 Pty Limited ACN 169 090 804, Tawreed Investments Limited, Transurban Sun Holdings Pty Ltd ACN 169 039 776 and AS Infrastructure No. 2 (Operating) Pty Ltd as trustee for AS Infrastructure No. 2 (Operating) Trust ACN 169 017 887 dated on or about the Acquisition Date, and each Loan Note Deed Poll entered into pursuant to that document;
- (e) the Loan Note Deed Poll of AS Infrastructure No. 2 (Operating) Pty Ltd as trustee for AS Infrastructure No. 2 (Operating) Trust ACN 169 017 887 dated on or about the Acquisition Date;
- (f) the Loan Note Deed Poll of Transurban Queensland Holdings 1 Pty Limited ACN 169 090 804 dated on or about the Acquisition Date;
- (g) the Equity Note Deed Poll of Queensland Motorways Holding Pty Limited ACN 150 265 197 dated on or about the Acquisition Date;

- (h) the Equity Note Deed Poll of TQ Holding Co dated on or about the Acquisition Date;
- (i) the Equity Note Deed Poll of TQ Operations dated on or about the Acquisition Date;
- (j) the First Onlending Agreement between TQ Trustee as trustee of the TQ Asset Trust and FinCo dated on or about the Acquisition Date;
- (k) the Second Onlending Agreement between TQ Operations and TQ Trustee as trustee of the TQ Asset Trust dated on or about the Acquisition Date; and
- (l) the constitution of each PPP Co, FinCo, TQ Holding Co, TQ Holding Trust Co, and TQ Holding Trust.

**"Equity Investor"** means a person who:

- (a) holds shares or units in a Holding Entity; or
- (b) provides shareholder loans (or other loans in the nature of equity funding) to or for the benefit of a Group Member or a Holding Entity.

**"Equity Return"** means, at any time, the nominal after tax internal rate of return per annum which a Notional Initial Equity Investor is projected to receive (which, for the avoidance of doubt, is after tax paid or payable on project cashflows, and is before any tax paid or payable by the Notional Initial Equity Investors) from the Acquisition Date until the end of the Concession Period (assuming no circumstance of early termination or extension) based on:

- (a) if the projection is being made during the period from the Acquisition Date until 23 July 2017, the Distributions to Notional Initial Equity Investors in the Base Case Financial Model; and
- (b) if the projection is being made after 23 July 2017, a reasonable forecast of Distributions to Notional Initial Equity Investors based on historical performance of the AL Project and current projected growth,

and in each case having regard to amounts actually Distributed or accrued (but not Distributed to Notional Initial Equity Investors) prior to that time.

**"Escrow Deed"** means a deed between the State, the relevant third party supplier and the Escrow Holder in substantially the form of Schedule 1 (Escrow Deed) to the IP Licence Deed.

**"Escrow Holder"** means Recall Information Management Pty Ltd ABN 25 004 270 991 or Assurex Escrow Pty Limited ABN 64 008 611 578 or another escrow agent selected by TQ Operations and approved by the State (such approval not to be unreasonably withheld).

**"Event of Default"** means:

- (a) in respect of a PPP Co, any event specified in clause 41.1; and
- (b) in respect of the State, any event specified in clause 41.4.

**"Event of Insolvency"** means:

- (a) in relation to a company, any of the following events:
  - (i) a "Controller", manager, trustee, administrator or similar officer is appointed in respect of the company or any asset of the company;

- (ii) a liquidator or provisional liquidator is appointed in respect of the company;
  - (iii) any application (not being an application withdrawn or dismissed within 10 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
    - A. appointing a person referred to in paragraphs (i) or (ii);
    - B. winding up the company; or
    - C. proposing or implementing a scheme of arrangement in respect of the company;
  - (iv) a moratorium of any debts of the company or an official assignment or a composition or an arrangement (formal or informal) with the company's creditors or any similar proceeding or arrangement by which the assets of the company are subjected conditionally or unconditionally to the Control of the company's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;
  - (v) the company becomes, admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
  - (vi) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the company; or
  - (vii) any act is done or event occurs which under the laws from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (i)-(vi); and
- (b) in relation to a trust, any of the following events:
- (i) an application or order is sought or made (and is not stayed or dismissed within 10 Business Days after being sought or made) in any court for the property of the trust to be brought into court or administered by the court or brought under its Control; or
  - (ii) the assets of the trust are not sufficient to satisfy the trustee's debts as and when they become due and payable in respect of which it has a right to be indemnified out of the assets of the trust.

**"EWAG"** means the road, elevated structures and other physical works, facilities, systems and Public Utility Plant described as being required for EWAG in the Performance Specification (including section 2.3.3 of the Introduction document of the Performance Specification) including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in EWAG and to be called EWAG or the Airport Roundabout Upgrade Project or such other name as agreed to by the State.

**"EWAG Accommodation Works"** means the Accommodation Works:

- (a) described as such in the Performance Specification (if any); or

- (b) that relate to any property which is affected by the EWAG Project Activities and not the AL D&C Activities.

**"EWAG Affected Road Works"** means the Affected Road Works:

- (a) described as such in the Performance Specification (if any); or
- (b) that relate to an Affected Road which crosses, is adjacent to, or is affected in any way by the EWAG Works and not the AL Works.

**"EWAG Area"** means the land described as such in the Site Access Schedule.

**"EWAG Bonds"** means the bonds referred to in clause 5.1(c) or any bond accepted in substitution for or replacement of those bonds.

**"EWAG Commencement Date"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Concept Design"** means the concept design for the EWAG Works in Part 2 of Annexure 1 of the Performance Specification.

**"EWAG Cultural Heritage Agreement"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Cultural Heritage Clearance Arrangements"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Defects Liability Period"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Final Completion"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Interface Agreement"** means the document titled "EWAG Interface Agreement" dated 25 July 2008 between the D&C Contractor, the Original NB Works Contractor and BAC and novated to the PPP Cos on the Acquisition Date.

**"EWAG Payment Schedule"** means the Payment Schedule referred to in the EWAG Works Deed.

**"EWAG Practical Completion"** means the stage when:

- (a) the EWAG Works, and everything else necessary to open EWAG for the safe, efficient and continuous passage of vehicles, is complete except for minor Defects which:
  - (i) do not prevent EWAG from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (ii) the Independent Verifier determines that the NB Works Contractor has reasonable grounds for not promptly rectifying; and
  - (iii) can be corrected without prejudicing the convenient use of EWAG for the safe, efficient and continuous passage of vehicles; and
- (b) each PPP Co and the NB Works Contractor has done everything which this deed (including the Performance Specification) and the EWAG Works Deed requires the relevant PPP Co and the NB Works Contractor to do as a condition precedent to EWAG Practical Completion including the relevant certification from BAC.

**"EWAG Project"** means:

- (a) the design, construction and commissioning of the EWAG Works; and
- (b) the handover of EWAG (other than BAC EWAG) to the State upon EWAG Practical Completion,

in accordance with this deed and the EWAG Works Deed.

**"EWAG Project Activities"** means all things the NB Works Contractor is, or may be, required to carry out or do under the State Project Documents in respect of the EWAG Project.

**"EWAG PUP Works"** means the PUP Works:

- (a) described as such in the Performance Specification (if any); or
- (b) that relate to a PUP that is adjacent to or is affected in any way by the EWAG Works and not the AL Works.

**"EWAG Returned Works"** means:

- (a) the EWAG PUP Works;
- (b) the EWAG Affected Road Works; and
- (c) the EWAG Accommodation Works.

**"EWAG State Planning Approval"** has the meaning given to it in the EWAG Works Deed.

**"EWAG Temporary Works"** means the Temporary Works:

- (a) described as such in the Performance Specification (if any); or
- (b) required for or affected in any way by the EWAG Project Activities and not the AL D&C Activities.

**"EWAG Termination Amount"** means on any date, the amount calculated in accordance with clause 23.5 (Costs) of the EWAG Works Deed.

**"EWAG Works"** means those parts of the Project Works which the NB Works Contractor must design, supply, construct, install, produce, commission or complete under this deed or the EWAG Works Deed in respect of the EWAG Project, including:

- (a) EWAG;
- (b) the EWAG PUP Works;
- (c) the EWAG Affected Road Works;
- (d) the EWAG Accommodation Works; and
- (e) the EWAG Temporary Works.

**"EWAG Works Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - EWAG Works Deed" between the State, the Original NB Works Contractor and BC Operations dated the date of this deed and novated to the PPP Cos on the Acquisition Date pursuant to the State Project Documents Novation Deed.

**"Existing Project Information"** means the category of documents referred to in paragraphs (a) and (b) of the definition of "Project Information".

**"Extra Land"** means the land referred to in clause 8.2(a).

**"Facility Owner"** means the owner of, or the entity entitled to exercise control with respect to, a Returned Facility.

**"Federation Street Connection"** means the two lane, two-way bus roadway between Section 1 of the Northern Busway over Lutwyche Road, through to the vicinity of Earle Street, that is independent of the road network and provided for the sole operation of buses and emergency services agencies' vehicles in emergencies.

**"Final Court Decision"** means a decision of a court:

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

**"Financial Close"** occurs when the last Condition Precedent to be satisfied (or waived under clause 2.3) has been satisfied (or waived under clause 2.3) and which occurred on 30 July 2008.

**"Financial Model"** means the Base Case Financial Model updated from time to time in accordance with clause 37.

**"Financial Year"** means each 12 month period commencing on 1 July and ending on 30 June.

**"FinCo"** means TQ APL Finance Co Pty Limited ACN 609 390 481.

**"First Change Report"** means any Coordinator-General's Change Report issued prior to Financial Close.

**"Force Majeure Event"** has the meaning given to it in clause 27.1.

**"Forecast Maintenance Program"** means the program setting out the maintenance work for the Tollroad and the Maintained Non-Tollroad Works for the Concession Period as updated in accordance with clause 19.8, the initial one of which appears in Part 2 of Annexure 4 to the Performance Specification.

**"Future Project Information"** means the category of documents referred to in paragraph (c) of the definition of "Project Information".

**"Group"** means the PPP Cos, FinCo and any wholly owned subsidiary of any of them, and **"Group Member"** means any of them.

**"GST"**, **"GST law"** and other terms used in clause 23.5 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any replacement or other relevant legislation and regulations, except **"GST law"** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 23.5) includes any GST payable by the representative member of any GST group of which the Supplier is a member. Any reference to an input tax credit to which a party is entitled includes an input tax credit for an acquisition made by that party but to which the representative member of any GST group of which the party is a member is entitled.

**"Handover"** means the stage when each PPP Co has done everything that this deed (including the Performance Specification) requires to enable the PPP Cos to handover the Tollroad and the Maintained Non-Tollroad Works in the required condition at the end of the Concession Period.

**"Handover Agreement Notice"** has the meaning given to it in clause 43.7(b).

**"Handover Amount"** has the meaning given to it in clause 43.7(a)(iii).

**"Handover Bond"** means a bond provided to the State under clause 43.1(d)(ii)B or any bond accepted in substitution for or replacement of that bond.

**"Handover Date"** means the date Handover is achieved as the State notifies a PPP Co in accordance with clause 43.

**"Handover Disagreement Notice"** has the meaning given to it in clause 43.7(b).

**"Handover Escrow Account"** has the meaning given to it in clause 43.1(d)(ii).

**"Handover Notice"** has the meaning given to it in clause 43.7(a).

**"Hazardous Substance"** means any substance which would or might reasonably be expected to cause damage or injury to any person, any property or the Environment.

**"Health and Safety Management Plan"** means the Project Plans relating to health and safety management prepared by the PPP Cos (in relation to the Project Activities) referred to in Annexures 9 and 13 to the Performance Specification.

**"Holding Company"** has the meaning given to it in the Corporations Act.

**"Holding Entity"** means each company or trust which, directly or indirectly, holds all of the issued shares or units in a PPP Co and which is not itself wholly owned by any other entity, and at the Acquisition Date, in respect of:

- (a) TQ Operations, means Transurban Queensland Holdings 1 Pty Limited ACN 169 090 804;
- (b) TQ Asset Trust, means TQ Invest Trust and TQ Invest Trust Co as trustee for the TQ Invest Trust; and
- (c) TQ Trustee, means the TQ Invest Trust and TQ Invest Trust Co as trustee for the TQ Invest Trust.

**"Incident"** means any event which:

- (a) prevents the Tollroad or any part of it from being open to the public for the safe, continuous and efficient passage of vehicles; or
- (b) otherwise requires an urgent response to:
  - (i) protect or repair the Tollroad, other property or the public;
  - (ii) provide access to emergency services or traffic control; or
  - (iii) prevent any occurrence which may cause damage to the Tollroad or compromise the safety of any person or property.

**"Incident Response Management Plan"** means the Project Plans relating to incident response management referred to in Annexures 4 and 9 of the Performance Specification.

**"Indemnified Persons"** has the meaning given to it in clause 39.7(a).

**"Independent Verifier"** means APP Corporation Pty Ltd ABN 29 003 764 770 or any other entity appointed as the independent verifier by the State, each PPP Co, the State Works Contractor, the NB Works Contractor and the Security Trustee from time to time.

**"Independent Verifier Agreement"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - Independent Verifier Agreement" between the State, each BrisConnections Party, the Original State Works Contractor, the Original NB Works Contractor, the Independent Verifier and the Original Security Trustee dated on 25 July 2008 and novated to the PPP Cos and the Security Trustee on the Acquisition Date.

**"Independent Verifier-QR Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron) / EWAG Projects - Independent Verifier-QR Deed" between the Independent Verifier and QR Limited dated on 28 July 2008.

**"Indexed"**, with respect to an amount other than any amount specified in the Toll Calculation Schedule, means, on each 1 July during the Concession Period, that amount will be adjusted in accordance with the formula set out below and then rounded upwards or downwards:

- (a) to the nearest \$1 million amount, in the case of a capital expenditure amount;
- (b) to the nearest \$1 million amount, in the case of an insurance amount;
- (c) to the nearest \$100,000 amount, in the case of a performance bond amount or a cash reserve amount;

Adjusted amount = Payment Multiplier x Original Amount

where:

Payment Multiplier = the quarterly CPI figure published immediately before the relevant 1 July divided by the CPI figure for the equivalent quarter in the previous year; and

Original Amount = the amount (whether previously adjusted or not) applicable immediately prior to the relevant 1 July (disregarding rounding (if any) applied to that amount at the previous 1 July.

**"Industrial Waste"** means any waste arising from commercial, industrial or trade activities and any waste containing substances or materials which are potentially harmful to human beings, any property or the Environment.

**"Initial Project Plan"** means, with respect to the following Project Plans:

- (a) the Marketing and Communications Management Plan;
- (b) the Community and Consultation Management Plan;
- (c) the AL Project and NB Project Design and Construction Environmental Management Plan;
- (d) the AL Works Fire and Life Safety Design Plan;

- (e) the NB Works Fire and Life Safety Design Plan;
- (f) the NB Whole of Life Plan; and
- (g) the Quality Management Plan,

the initial versions of those Project Plans that appear in Part 2 of an Annexure to the Performance Specification.

**"Insurance Proceeds Account"** means the account opened in accordance with clause 30.12.

**"Insurances"** means the insurances required to be effected and maintained under this deed.

**"Intellectual Property Rights"** includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields and all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing, whether created before, on or after the date of this deed and whether existing in Australia or otherwise.

**"Interface Agreements"** means:

- (a) the Direct Interface Agreements; and
- (b) the Upstream Interface Agreements.

**"Interface Parties"** means those parties to the Interface Agreements other than the State, the PPP Cos, the State Works Contractor, the NB Works Contractor and the D&C Contractor.

**"Interoperability Agreement"** means:

- (a) any agreement for Tag Interoperability as referred to in clause 20.6(a); and
- (b) any agreement for Pass Interoperability as referred to in clause 20.6(b).

**"Interoperable"** means when the Tolling System:

- (a) has each of the following features:
  - (i) it is capable of recording a journey undertaken and tolls and charges incurred by a user of the Tollroad who is entitled to use another Australian tollroad pursuant to an arrangement between another Tollroad Service Provider and a Customer of that other Tollroad Service Provider;
  - (ii) it enables that user to be billed for tolls and charges incurred on that journey by that other Tollroad Service Provider; and
  - (iii) it provides for payment of tolls and charges incurred on that journey to be remitted to TQ Operations from that other Tollroad Service Provider (whether directly or through an agreed payments clearing mechanism); and
- (b) allows TQ Operations to provide reciprocal capacity to each other Australian tollroad without prior arrangement between either:

- (i) the Customer of the other Tollroad Service Provider and TQ Operations;  
or
- (ii) a Customer of TQ Operations and the other Tollroad Service Provider.

**"Interoperable User"** means any person who uses the Tollroad pursuant to an arrangement between another Tollroad Service Provider and a Customer of that other Tollroad Service Provider where that Tollroad Service Provider has an Interoperability Agreement with TQ Operations.

**"IP Licence Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - IP Licence Deed" between the State and each BrisConnections Party dated the date of this deed and novated to the PPP Cos on the Acquisition Date pursuant to the State Project Documents Novation Deed.

**"IPR Claim"** means any Claim by a third party that the Deliverables or their design, manufacture, delivery, supply, use or enjoyment in accordance with or as contemplated by this deed, infringe any Intellectual Property Rights or moral rights of that or any other third party and includes a claim by an individual author that any such design, manufacture, delivery, supply, use or enjoyment infringes that author's moral rights under any applicable copyright or other intellectual property laws.

**"Joint Principal Design Engineer"** means the unincorporated joint venture between Arup Pty Ltd ABN 87 010 221 486 and Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798.

**"Key State EWAG Approval"** has the meaning given to it in the EWAG Works Deed.

**"Last DLP"** means the later of, the date of:

- (a) the expiry of the last Defects Liability Period to expire;
- (b) the expiry of the last EWAG Defects Liability Period to expire; and
- (c) the expiry of the last NB Defects Liability Period to expire.

**"Law"** includes:

- (a) those principles of law established by decisions of courts;
- (b) statutes, regulations, by-laws and other subordinate regulations of the Commonwealth or State or an Authority;
- (c) binding requirements and Approvals (including any conditions or requirements under them); and
- (d) the lawful requirements of an Authority.

**"Lease"** means each lease of the Leased Area for the Tollroad granted by the State to BC Trustee and acquired by TQ Trustee on the Acquisition Date by way of assignment from BC Trustee pursuant to the Lease Assignment and Assumption Deed.

**"Lease Assignment and Assumption Deed"** means the document entitled "Assignment and Assumption Deed - Agreement to Lease and Lease - Airportlink M7" between TQ Trustee, BC Trustee and the State dated on or about the Acquisition Date.

**"Leased Area"** means the subdivided stratum (limited in height and depth) and other areas from the Tollroad Area to be the subject of the Lease, generally as shown in the indicative

outline plans and drawings which appear in Attachment 4 of the Site Access Schedule subject to any change to these areas of land which are agreed by the parties in writing.

**"Licensed Construction Areas"** means:

- (a) the Tollroad Area;
- (b) the EWAG Area;
- (c) the Busway Area; and
- (d) the Temporary Areas.

**"Licensed Maintenance Areas"** means the areas described as such and shown in the indicative outline plans and drawings which appear in Attachment 4 of the Site Access Schedule subject to any change to these areas of land which are agreed by the parties in writing.

**"Local Industry Participation Plan"** means the Project Plans of that name referred to in Annexure 9 of the Performance Specification.

**"Local Industry Participation Policy"** means the policy issued by the State titled "Local Industry Policy; A Fair Go For Local Industry 2001" - or such other policy as replaces that policy from time to time.

**"Long Service Leave Legislation"** means the *Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)*.

**"Loss"** means:

- (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty.

**"Maintained Non-Tollroad Works"** means those:

- (a) AL PUP Works;
- (b) AL Affected Road Works; and
- (c) AL Accommodation Works,

which are not Returned Works.

**"Maintenance & Repairs Account"** means the account established and maintained in accordance with clause 19.7.

**"Maintenance Site"** means:

- (a) the Leased Area;
- (b) the Licensed Maintenance Areas; and
- (c) all other areas upon which the O&M Activities are being carried out or materials are being prepared or stored.

**"Management Services Agreement"** means the document entitled "Management Services Agreement" between TQ Operations and Queensland Motorways Services Pty Limited ACN 165 422 202 dated on or about the Acquisition Date.

**"Marketing and Communications Management Plan"** means the Project Plan relating to marketing and communications objectives referred to in Annexure 9 of the Performance Specification, the initial one of which appears in Part 2 of Annexure 9 of the Performance Specification.

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the ability of FinCo to pay to the Debt Financiers the amounts due (or that would have been due were it not for the occurrence of the relevant event, omission or occurrence) under, and substantially in accordance with, the Debt Financing Documents (without regard to any acceleration of the obligation to repay); or
- (b) Equity Return.

**"Modification"** means any change to:

- (a) the Project Works;
- (b) the Tollroad (including the Tolling System); or
- (c) the D&C Activities or the O&M Activities,

including any addition, increase, decrease, omission, deletion, demolition or removal to or from them.

**"Modification Cost"** means, to the extent a Modification (relating to any or all of the Projects) increases the cost of the D&C Activities or to the extent a Modification (relating to the AL Project only) increases the cost of the O&M Activities:

- (a) the direct costs and associated on-site overheads reasonably arising out of or in connection with the Modification (including any increased construction costs and with respect to the AL D&C Activities and the O&M Activities only, operating costs, maintenance costs or debt financing costs); and
- (b) a reasonable amount on account of the off-site overheads and profit margin of the D&C Contractor (which in the case of a Modification relating to the AL Project will be the amount calculated by multiplying the OSOP (MC) Margin by the costs described in paragraph (a) and in the case of a Modification relating to the NB Project or the EWAG Project will be the amount calculated by multiplying the overheads and profit margin set out in the NB Payment Schedule or the EWAG Payment Schedule (as appropriate) by the costs described in paragraph (a)) and/or the O&M Contractor (as applicable), but not a PPP Co, the State Works Contractor or the NB Works Contractor unless:
  - (i) the proposed Modification is funded wholly or partly from a raising of new equity, in which case the Modification Cost will include a reasonable market rate of return on that new equity; or
  - (ii) the proposed Modification will delay the Date of Tollroad Completion beyond the Date for Tollroad Completion, in which case the Modification Cost will include an amount calculated to provide a return to the Equity Investors equal to the Base Case Equity Return calculated

upon their committed amount of equity for the period of that delay beyond the Date for Tollroad Completion,

after deducting all decreases in the cost of the D&C Activities and the O&M Activities.

**"Modification Saving"** means, to the extent a Modification decreases the cost of the D&C Activities or the O&M Activities:

- (a) the cost savings arising out of or in connection with the Modification (including any savings in relation to construction costs and associated on-site overheads, and with respect to the AL D&C Activities and the O&M Activities only, operating costs, maintenance costs or financing costs); and
- (b) a reasonable amount on account of the off-site overheads and profit margin (which in the case of a Modification relating to the AL Project will be the amount calculated by multiplying the OSOP (MS) Margin by the cost savings described in paragraph (a) and in the case of a Modification relating to the NB Project or the EWAG Project will be the amount calculated by multiplying the overheads and profit margin set out in the NB Payment Schedule or the EWAG Payment Schedule (as appropriate) by the cost savings described in paragraph (a)).

**"Native Title Claim"** means any claim or application under any Law or future Law relating to native title, including any application under section 61 of the *Native Title Act 1993* (Cth).

**"NB Accommodation Works"** means:

- (a) the Accommodation Works described as such in the Performance Specification (if any); and
- (b) any other Accommodation Works that are not AL Accommodation Works or EWAG Accommodation Works.

**"NB Affected Road Works"** means:

- (a) the Affected Road Works described as such in the Performance Specification (if any); and
- (b) any other Affected Road Works that are not AL Affected Road Works or EWAG Affected Road Works.

**"NB Bonds"** means the bonds referred to in clause 5.1(b) or any bond accepted in substitution for or replacement of those bonds.

**"NB Contract Price"** has the meaning given to it in the NB Works Deed.

**"NB Defects Liability Period"** has the meaning given to it in the NB Works Deed.

**"NB Discriminatory Change in State Law"** has the meaning given to it in the NB Works Deed.

**"NB Final Completion"** has the meaning given to it in the NB Works Deed.

**"NB Payment Schedule"** has the meaning given to it in the NB Works Deed.

**"NB Practical Completion"** means the stage when:

- (a) the NB Works, and everything else necessary to open the Northern Busway (Windsor to Kedron) for the safe, efficient and continuous passage of vehicles, is complete except for minor Defects which:
- (i) do not prevent the Northern Busway (Windsor to Kedron) from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (ii) the Independent Verifier determines that the NB Works Contractor has reasonable grounds for not promptly rectifying; and
  - (iii) can be corrected without prejudicing the convenient use of the Northern Busway (Windsor to Kedron) for the safe, efficient and continuous passage of vehicles; and
- (b) each PPP Co and the NB Works Contractor have done everything which this deed (including the Performance Specification) and the NB Works Deed requires the relevant PPP Co or the NB Works Contractor to do as a condition precedent to NB Practical Completion.

**"NB Project"** means:

- (a) the design, construction and commissioning of the NB Works; and
- (b) the handover of the Busway to the State upon NB Practical Completion,

in accordance with this deed and the NB Works Deed.

**"NB Project Activities"** means all things the NB Works Contractor is, or may be, required to carry out or do under the State Project Documents in respect of the NB Project.

**"NB PUP Works"** means:

- (a) the PUP Works described as such in the Performance Specification (if any); and
- (b) any other PUP Works that are not AL PUP Works or EWAG PUP Works.

**"NB Returned Works"** means:

- (a) the NB PUP Works;
- (b) the NB Affected Road Works; and
- (c) the NB Accommodation Works.

**"NB Temporary Works"** means:

- (a) the Temporary Works described as such in the Performance Specification (if any); and
- (b) any other Temporary Works that are not AL Temporary Works or EWAG Temporary Works.

**"NB Termination Amount"** means on any date the amount calculated in accordance with clause 18.5 (Costs) of the NB Works Deed.

**"NB Whole of Life Plan"** means the Project Plan relating to whole of life objectives referred to in Annexure 9 of the Performance Specification, the initial one of which appears in Part 2 of Annexure 9 of the Performance Specification.

**"NB Works"** means those parts of the Project Works which the NB Works Contractor must design, supply, construct, install, produce, commission or complete under this deed or the NB Works Deed solely in respect of the Northern Busway (Windsor to Kedron), including:

- (a) the Busway;
- (b) the NB PUP Works;
- (c) the NB Affected Road Works;
- (d) the NB Accommodation Works; and
- (e) the NB Temporary Works.

**"NB Works Contractor"** means TQ Operations.

**"NB Works Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - NB Works Deed" between the State and the Original NB Works Contractor dated the date of this deed and novated to the NB Works Contractor on the Acquisition Date pursuant to the State Project Documents Novation Deed.

**"NB Works Fire and Life Safety Design Plan"** means the Project Plans of that name referred to in Annexures 1 and 9 of the Performance Specification, the initial one of which appears in Part 2 of Annexure 9 of the Performance Specification.

**"Negative Compensable Enhancement"** has the meaning given to it in clause 23.2(c)(i).

**"Nominated Tolling Product"** has the meaning given to that term in the RFA.

**"North-South Bypass Tunnel" or "NSBT"** means the tollroad project known as the "North-South Bypass Tunnel Project" which includes a dual twin lane tunnel, linking Ipswich Road at Woollongabba and Shaftston Avenue at Kangaroo Point to Lutwyche Road and the Inner City Bypass at Bowen Hills.

**"Northern Busway"** means the two-lane, two-way bus only roadway proposed between the existing Inner Northern Busway at Royal Children's Hospital at Herston north through to Sadlier Street, Kedron and more particularly described as the "Ultimate Busway" in the CDIMP.

**"Northern Busway (Windsor to Kedron)"** means the busway from and including the Federation Street Connection through to Sadlier Street, Kedron, other than that part of the busway between the northern end of the Federation Street Connection and Constitution Road. It is more particularly described as sections 3, 4 and 5 of the "Interim Busway" (as described in the CDIMP) together with the Federation Street Connection.

**"Notional Initial Equity Investor"** means a notional Australian corporate taxpayer who is deemed to hold share capital or units in, or provides shareholder loans (or other loans or subscriptions in the nature of equity funding) to or for the benefit of, a Group Member or Holding Entity (**Equity**) where the amount of such Equity is included as Equity in the Base Case Financial Model, from the Acquisition Date until the end of the Concession Period (assuming no circumstance of early termination or extension).

**"Original Agent"** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522.

**"O&M Activities"** means all things and tasks which TQ Operations is, or may be, required to do in discharging its operation, maintenance or repair obligations under this deed, or its other obligations under this deed arising out of or in respect of or in connection with the operation, maintenance or repair of the Tollroad and the maintenance or repair of the Maintained Non-Tollroad Works.

**"O&M Best Practices"** means operating, maintenance and repair practices performed with the due skill, care and diligence which may reasonably be expected of a skilled professional suitably qualified in the performance of obligations similar to TQ Operations' obligations under this deed so as to achieve a result consistent with Law, reliability, safety, protection of the Environment and the requirements of this deed. It includes everything reasonably necessary to ensure that:

- (a) the Tollroad and the Maintained Non-Tollroad Works are operated, maintained and repaired in a manner safe to all people and the Environment;
- (b) the Tollroad and the Maintained Non-Tollroad Works are functioning as designed;
- (c) operation, maintenance and repairs are performed to ensure reliable long-term and safe operation and are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (d) sufficient operation and maintenance personnel are available and are adequately experienced and trained;
- (e) adequate materials, resources and supplies are available to ensure compliance with the requirements of this deed under normal conditions and reasonably anticipated abnormal conditions;
- (f) the principle of continuous improvement is adhered to, that is, a commitment to continually improving the standards and quality of the operation and maintenance of the Tollroad and the Maintained Non-Tollroad Works and the manner in which it is carried out including ensuring that the operation and maintenance of the Tollroad and the Maintained Non-Tollroad Works is carried out in a manner which at all times remains consistent with the overall road network systems and standards; and
- (g) advancements in technology are promptly responded to and incorporated into the operation and maintenance of the Tollroad and the Maintained Non-Tollroad Works no later than the time when the relevant component of the Tollroad and the Maintained Non-Tollroad Works is due to be replaced.

**"O&M Bond"** means the bond referred to in clause 5.1(d) or any bond accepted in substitution or replacement of that bond.

**"O&M Consent Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - O&M Consent Deed" between TQ Operations, the O&M Contractor, the O&M Guarantor and the Security Trustee dated on or about the date of the Security Trust Deed.

**"O&M Contract"** means the Original O&M Contract, any replacement of the Original O&M Contract or any other contract between TQ Operations and an O&M Contractor for the operation maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works.

**"O&M Contractor"** means the Original O&M Contractor and any person who in addition or substitution is engaged by TQ Operations to undertake all, or substantially all, of the O&M Activities.

**"O&M Guarantee"** means the guarantee given by the O&M Guarantor in favour of TQ Operations and the Security Trustee in the document entitled "O&M Guarantee and Bonding Deed" dated on or about the Acquisition Date and any other guarantee given by an O&M Guarantor to a PPP Co in respect of the obligations of an O&M Contractor under an O&M Contract.

**"O&M Guarantor"** means CIMIC Group Limited ABN 57 004 482 982 and any person who in addition, or substitution, guarantees the obligations of an O&M Contractor under an O&M Contract.

**"O&M Manuals"** means the manuals required by the Performance Specification (as amended or updated from time to time in accordance with clause 19.5), which describe the policy, practices and procedures for the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works.

**"O&M Phase"** means the period beginning on the Tollroad Opening Date and ending on the last day of the Concession Period.

**"O&M Phase Insurances"** means the Insurances referred to in clause 30.2.

**"O&M Side Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - O&M Side Deed" between the State, each BrisConnections Party, the Original O&M Contractor, the Original O&M Guarantor and the Independent Verifier dated on 25 July 2008 and novated to the PPP Cos on the Acquisition Date.

**"Original D&C Contract"** means the agreement between each BrisConnections Party, the Original State Works Contractor and the Original NB Works Contractor (as joint principals) and the Original D&C Contractor for the design and construction of the Project Works dated the date of this deed (as supplemented by deed dated 31 July 2014) and novated to the PPP Cos on the Acquisition Date.

**"Original D&C Contractor"** means Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268, jointly and severally.

**"Original D&C Guarantor"** means Leighton Holdings Limited ABN 57 004 482 982.

**"Original NB Works Contractor"** means Northern Busway Contracting Pty Limited ACN 128 161 464.

**"Original O&M Contract"** means the agreement between BC Operations and the O&M Contractor for the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works dated the date of this deed as varied by deed dated 28 November 2013 and novated by deeds dated 25 March 2014 and 13 October 2015 and novated to the PPP Cos on the Acquisition Date.

**"Original O&M Contractor"** means Thiess Services Pty Ltd ABN 69 010 725 247 and John Holland Services Pty Ltd ABN 74 099 412 656, jointly and severally.

**"Original O&M Guarantor"** means Thiess Pty Ltd ABN 87 010 221 486 and John Holland Group Pty Ltd ABN 37 050 242 147, jointly and severally.

**"Original Security Trustee"** means ANZ Fiduciary Services Pty Limited ABN 91 100 709 493.

**"Original State Works Contractor"** means BrisConnections Contracting Pty Limited ACN 128 631 498.

**"OSOP (MC) Margin"** means 15%.

**"OSOP (MS) Margin"** means 10%.

**"Parcel"** means a parcel of land and property of which the State is not the registered proprietor or controller of and in relation to which, or upon which, Accommodation Works are to be undertaken.

**"Pass Interoperable"** means Interoperable for non-Tag Customers of TQ Operations or another Tollroad Service Provider.

**"Payment Claim Completion"** has the meaning given to it in the State Works Deed.

**"Payment Date"** means for the purposes of clause 23.2(d)(iii), in respect of each Financial Year, the date which is 20 Business Days after the end of that Financial Year.

**"Payment Period"** means for the purposes of clause 23.2(d)(iii), in respect of each Financial Year, the period commencing on the first day of that Financial Year and ending on the Payment Date.

**"Performance Specification"** means the documents and drawings set out in Exhibit A.

**"Performance Specification (Part 1)"** means Part 1 of every Annexure to Exhibit A.

**"Permitted Share Capital Dealing"** means a Share Capital Dealing specified in Schedule 18.

**"Perpetual Lease"** means the lease which may be granted by the Governor in Council to the State under the *Land Act* 1994 (Qld) which includes the Leased Area.

**"Planning Approval"** means:

- (a) the Coordinator-General's conditions and recommendations, contained in the Coordinator-General's Report;
- (b) the Coordinator-General's conditions or recommendations, made or amended in a Coordinator-General's Change Report; and
- (c) the conditions imposed by the State set out in Schedule 12.

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

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

**"Possible MAE Event"** means an event or circumstance referred to in clause 26.1.

**"PPP Co"** means either or both TQ Trustee in its own capacity and as trustee of the TQ Asset Trust and TQ Operations as the context requires.

**"PPP Co AL D&C Activities"** means, with respect to a PPP Co, all things that the PPP Co is, or may be, required to carry out or do:

- (a) in connection with the design and construction of the PPP Co AL Works; or
- (b) otherwise to comply with its obligations under this deed with respect to the PPP Co AL Works,

but not including the SWC D&C Activities, the EWAG Project Activities or the NB Project Activities.

**"PPP Co AL Works"** means the AL Works other than the State AL Works.

**"PPP Cos' Modification Notice"** means a notice given by the PPP Cos pursuant to clause 22.1(c) or the PPP Cos' response to the State's notice in accordance with clause 22.1(f)(i).

**"Pre-Agreed Modification"** means any of the Modifications specified in the Pre-Agreed Modification Schedule.

**"Pre-Agreed Modification Cost"** means the relevant amount specified in the Pre-Agreed Modification Schedule in respect of a Pre-Agreed Modification.

**"Pre-Agreed Modification Schedule"** means Schedule 21.

**"Preferred Tollroad Service Provider"** means, in respect of a tollroad, the Tollroad Service Provider which is either the operator (or its Associate) or another person who users of the tollroad are directed to contact to pay the toll in preference to other Tollroad Service Providers.

**"Principal Contractor"** means the position of "principal contractor" under the *Work Health and Safety Regulation 2011* (Qld).

**"Principal Traffic Connections"** means the connections to the Tollroad specified in Schedule 7.

**"Product Features"** means in respect of each Nominated Tolling Product, each feature of that Tolling Product as specified in the annexures to Schedule 4 of the RFA applicable to that Nominated Tolling Product.

**"Project Activities"** means all things that the PPP Cos, the State Works Contractor or the NB Works Contractor is, or may be, required to do to comply with its obligations under the State Project Documents. It includes the D&C Activities and the O&M Activities.

**"Project Areas"** means the Construction Site and the Maintenance Site.

**"Project Debt"** means:

- (a) the Actual Debt; and
- (b) the net amount of any money payable or receivable by FinCo on the termination of any interest rate risk management agreement entered into by FinCo to limit or otherwise manage its exposure to interest rate fluctuations in respect of the Project Debt provided that the method of calculating the termination amount and the actual calculation of the termination amount is furnished to the State and:
  - (i) if FinCo is a net receiver of such moneys the amount is a negative number; and

(ii) if FinCo is a net payer of such moneys the amount is a positive number.

**"Project Documents"** means:

- (a) this deed;
- (b) the State Works Deed;
- (c) the EWAG Works Deed;
- (d) the NB Works Deed;
- (e) the Agreement to Lease;
- (f) the Lease;
- (g) the Sub-Lease;
- (h) the Debt Finance Side Deed;
- (i) the State Security;
- (j) the D&C Contract;
- (k) the O&M Contract;
- (l) the D&C Side Deed;
- (m) the O&M Side Deed;
- (n) the Equity Documents;
- (o) the Debt Financing Documents;
- (p) the Independent Verifier Agreement;
- (q) the Subordinate Independent Verifier Deed of Appointment;
- (r) the Deed of Appointment of Financier's Engineer;
- (s) the IP Licence Deed;
- (t) the D&C IP Licence Deed;
- (u) any Escrow Deed;
- (v) the Interface Agreements;
- (w) the Designer Direct Deed;
- (x) the Independent Verifier-QR Deed;
- (y) the Transaction Consent Deed;
- (z) the Asset Disposal Agreement;
- (aa) the Account Bank Undertaking;
- (bb) the Road Network Interface Agreement Novation Deed;

- (cc) the Tolling Services Agreement;
- (dd) the Management Services Agreement;
- (ee) each Key Transaction Deed (as defined in the Transaction Consent Deed); and
- (ff) any other document the parties agree is a Project Document.

**"Project Information"** means:

- (a) the documents and information referred to in Exhibit F;
- (b) all other documents provided to a BrisConnections Party prior to the date of this deed which were stated to be "Project Information"; and
- (c) all documents provided to a BrisConnections Party or PPP Co after the date of this deed which the State is not required by the terms of this deed to provide to a BrisConnections Party or PPP Co.

**"Project Intellectual Property Rights"** means all Intellectual Property Rights in:

- (a) any Deliverables, including Intellectual Property Rights:
  - (i) existing at the date of this deed; or
  - (ii) which come into existence after the date of this deed, including those derived from Intellectual Property Rights existing at the date of this deed; and
- (b) any information, ideas, documents, equipment or material of any kind and however embodied, which are supplied, brought to or used in the AL Project or otherwise made available to the State under this deed by a PPP Co, whether forming part of the Deliverables or not, whether or not owned by a third party.

**"Project Plans"** means the project plans referred to in Part 1 of Annexure 9 to the Performance Specification.

**"Project Training Management Plan"** means the Project Plans of that name referred to in Annexure 9 to the Performance Specification.

**"Project Works"** means the physical things and works which a PPP Co, the State Works Contractor or the NB Works Contractor must design, supply, construct, install, produce or complete under this deed, the State Works Deed, the EWAG Works Deed or the NB Works Deed including:

- (a) the Busway;
- (b) EWAG;
- (c) the Tollroad;
- (d) the PUP Works;
- (e) the Affected Road Works;
- (f) the Accommodation Works; and
- (g) the Temporary Works.

It is comprised by:

- (h) the AL Works, the EWAG Works and the NB Works; or
- (i) the PPP Co AL Works, the State AL Works, the EWAG Works and the NB Works.

**"Projects"** means the AL Project, the EWAG Project and the NB Project.

**"Proof Engineer & Construction Verifier"** means, at any time, the person then appointed as proof engineer and construction verifier by the PPP Cos in accordance with clause 6.8.

**"Proprietary Material"** means:

- (a) the Design Documentation;
- (b) the Tolling System;
- (c) the Project Plans; and
- (d) all other documentation, information (including data bases), models, systems and technology in which Intellectual Property Rights are capable of subsisting which the PPP Cos or their contractors use in undertaking the AL Project or the AL Project Activities and which is reasonably required by the State for:
  - (i) approval as a Deliverable;
  - (ii) the commissioning of the AL Works;
  - (iii) the operation, maintenance and repair of the Tollroad;
  - (iv) the maintenance and repair of the Maintained Non-Tollroad Works;
  - (v) the levying of Tolls and imposition of User Charges;
  - (vi) the handover of the Tollroad to the State at the end of the Concession Period, in accordance with this deed;
  - (vii) the purposes of the AL Project (including achieving Tollroad Completion and Close-Out, operating the Tollroad and maintaining and repairing the Tollroad and the Maintained Non-Tollroad Works); or
  - (viii) the purposes of the design, construction, operation, maintenance, repair and alteration of infrastructure and other things (including any Proximate Work) which interface with the AL Works, the Tollroad or the Maintained Non-Tollroad Works,

but does not include software tools which are:

- (ix) used internally by contractors of the PPP Cos to create, but which are not incorporated in any way into, the materials described in (a) to (d) above; or
- (x) generally commercially available.

**"Proximate Work"** has the meaning given to it in clause 21.3.

**"Public Disclosure Obligations"** has the meaning given to it in clause 40.2(a).

**"Public Utility Plant" or "PUP"** means any service or item of infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway, monorail, tramway, aqueduct, conduit, cable, pipe, pipeline, pole, electrical installation, telecommunications plant, water channel, and railway and electronic communications services (except those communication systems provided as part of the Project Works as generally described in section 14 of Annexure 1 Part 1 of the Performance Specification) but excluding Constructional Plant.

**"PUP Works"** means the physical things and works which a PPP Co must design, supply, construct, install, produce or complete in respect of the construction, modification or relocation of PUP and handover to the State, an Authority or to another person in accordance with this deed other than PUP to be handed over as part of the Busway, EWAG or the Tollroad.

**"Qualified Fire Engineer"** means John Munroe of Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798.

**"Quality Management Plan"** means the Project Plans relating to quality management referred to in Annexures 9 and 10 of the Performance Specification, the initial one of which appears in Part 2 of Annexure 9 of the Performance Specification.

**"Quality Manager"** means Charles Doyle of John Holland Pty Ltd ABN 11 004 282 268 or such other person as is notified by a PPP Co and not objected to by the State within 14 days, provided that the State will not unreasonably object to any such notified person.

**"Quarter"** means each 3 month period commencing on a Quarterly Date.

**"Quarterly Date"** means 1 January, 1 April, 1 July and 1 October in any year during the Concession Period.

**"Rail Interface Agreement"** means the document so entitled dated 30 May 2008 between the BrisConnections Parties, the Original State Works Contractor, the Original NB Works Contractor and Queensland Rail as varied by deed dated 28 July 2008 and novated to the PPP Cos on the Acquisition Date.

**"Reasonable Fee"** means, in respect of the licence fees payable under clause 39.4 in relation to the Intellectual Property Rights in certain Deliverables or methods of working, the reasonable market rate for the Intellectual Property Rights in a system or product similar to the relevant Deliverables or methods of working, having regard to the relevant nominated use and assuming that there are a number of non-collusive and competitive suppliers of systems or products similar to the relevant Deliverables or methods of working.

**"Refinancing"** means:

- (a) any amendment, novation, supplement or replacement of any Debt Financing Document;
- (b) the exercise of any right, or the request for a grant of any waiver or consent, under any Debt Financing Document;
- (c) the disposition or any rights or interests in, or the creation of any rights of participation in respect of the Debt Financing Documents or the creation or granting of any other form of benefit or interest in either the Debt Financing Documents or the contracts, revenues or assets of the Group whether by way of security or otherwise;
- (d) any new financing arrangements entered into by a Group Member; or

- (e) any other step or arrangement that has an effect which is similar to any of the actions referred to in paragraphs (a) to (d),

which is likely to:

- (f) give rise to a Refinancing Gain; or
- (g) adversely affect any of the State's rights, obligations or liabilities under the State Project Documents.

**"Refinancing Assumptions"** means each of the terms, conditions and assumptions concerning a Refinancing set out in the "External Debt Schedule" as presented in the "book" worksheet of the Base Case Financial Model.

**"Refinancing Gain"** means, in respect of any event set out in paragraphs (a) to (e) of the definition of Refinancing:

- (a) the positive amount of any Distributions made or to be made as a result of or in connection with the Refinancing on or before the effective date of the Refinancing; and
- (b) the amount of any increase in, or the increased value attributable to any acceleration of, Distributions (less the amount of any reductions in, or the decreased value attributable to any deferral of Distributions) projected to be made in connection with the Refinancing in the period from the effective date of the Refinancing to the expiry of the Concession Period,

taking due account of both the timing and the amount of any such gains which would have been delivered by an Assumed Refinancing if the relevant Refinancing is being undertaken instead of that Assumed Refinancing, it being acknowledged that gains from Assumed Refinancings have already been reflected in the Tolls and User Charges set out in the Toll Calculation Schedule and the Tolling Declaration and that the State should receive no additional payment in respect of such gains.

**"Related Body Corporate"** has the meaning given to it in the Corporations Act.

**"Related Trust Entity"** means with respect to an entity which is a trustee, manager or Responsible Entity of a trust or a managed investment scheme means:

- (a) any Related Body Corporate of the trustee, manager or Responsible Entity;
- (b) any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or
- (c) any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.

**"Relevant Entity"** has the meaning given to it in clause 19.11.

**"Reputable Insurer"** means an insurance company having a financial performance rating of at least A- by AM Best or a financial strength rating of at least A by Standard and Poor's.

**"Required Rating"** means:

- (a) for the purposes of clause 36.5, a credit rating of at least BBB by Standard and Poor's (Australia) Pty Limited or Baa2 by Moody's Investor Service, Inc.; and

- (b) in each other case, a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.

**"Responsible Entity"** has the meaning given to it in the Corporations Act.

**"Returned Facility"** means any discrete part of the Returned Works completed in accordance with this deed or the State Works Deed.

**"Returned Works"** means the AL Returned Works, the EWAG Returned Works and the NB Returned Works.

**"RFA"** means the document entitled "Road Franchise Agreement" between the State, Queensland Motorways Pty Limited ACN 067 242 513, Gateway Motorway Pty Limited ACN 010 127 303 and Logan Motorways Pty Limited ACN 010 704 300 dated 23 March 2011, as varied by deed dated 2 July 2014.

**"Road Network Interface Agreement Novation Deed"** means the deed entitled "Novation Deed – Airportlink Road Network Interface Agreement" between TQ Operations, BC Operations, the State and Brisbane City Council dated on or about the Acquisition Date.

**"Section 1 of the Northern Busway"** means that part of the Northern Busway constructed, or to be constructed by others on the western side of Lutwyche Road from the existing Inner Northern Busway at Royal Children's Hospital at Herston, north through to the local road network at Northey Street. For the avoidance of doubt, it is not part of the NB Project.

**"Security Trust Deed"** means the deed entitled "Project Sky - Security Trust Deed" between the Security Trustee, each PPP Co, FinCo and others dated on or about the Acquisition Date.

**"Security Trustee"** means, at any time, the person appointed as security trustee under the Security Trust Deed. At the Acquisition Date, the Security Trustee is Westpac Banking Corporation ABN 33 007 457 141.

**"Senior Project Group"** means the group referred to in clause 6.6.

**"Share Capital Dealing"** has the meaning given to it in clause 34.6.

**"Site Access Schedule"** means Annexure B to the Agreement to Lease.

**"Stage 2 Design Documentation"** means Design Documentation developed to "stage 2" as described in the Documentation Schedule.

**"State AL Works"** has the meaning given to it in the State Works Deed.

**"State Directed Benefit"** means:

- (a) a change in the infrastructure, management or operation of all or any part of the Brisbane transportation network (including the public transport network), the implementation of a policy that affects the whole or any part of that network, or the exercise of any right or power to which clause 21.1 applies; or
- (b) the acceleration or early adoption or implementation of such a change or such a thing,

the adoption, implementation, exercise or acceleration of which:

- (c) is specifically for the purpose of redressing (in whole or in part) the Material Adverse Effect of a Possible MAE Event;

- (d) occurs after that event;
- (e) is notified by the State to the PPP Cos; and
- (f) has not been fully factored into the Base Case Financial Model.

**"State Law"** means legislation of the State, including:

- (a) delegated legislation;
- (b) any document or policy enforceable under such legislation or delegated legislation; and
- (c) Council local law, including model local law, interim local law and subordinate local law.

**"State Project Documents"** means those Project Documents that the State is a party to.

**"State Project Documents Novation Deed"** means the document so entitled between the PPP Cos, the BrisConnections Parties, the Original State Works Contractor, the Original NB Works Contractor and the State dated on or about the Acquisition Date.

**"State Security"** means the general security deed granted by each PPP Co and FinCo to the State on or about the Acquisition Date.

**"State Works Contractor"** means TQ Operations.

**"State Works Deed"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - State Works Deed" between the State and the Original State Works Contractor dated the date of this deed and novated to the State Works Contractor on the Acquisition Date pursuant to the State Project Documents Novation Deed.

**"Sub-Lease"** means the sub-lease of the Leased Area for the Tollroad granted by BC Trustee to BC Operations and acquired by TQ Operations on the Acquisition Date by way of assignment from BC Operations pursuant to the Sublease Assignment and Assumption Deed.

**"Sublease Assignment and Assumption Deed"** has the meaning given to it in the Asset Disposal Agreement.

**"Subordinate Independent Verifier Deed of Appointment"** means the document entitled "Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects – Subordinate Independent Verifier Deed of Appointment" between each BrisConnections Party, the Original State Works Contractor, the Original NB Works Contractor, the D&C Contractor, the O&M Contractor, APP Corporation Pty Ltd and the Original Security Trustee dated on 25 July 2008 as novated by deeds dated 25 March 2014 and 13 October 2015 and novated to the PPP Cos on the Acquisition Date.

**"Subscription Agreement"** means the document entitled "Project Sky – Subscription Agreement" between the PPP Cos, Transurban Holdings Limited ACN 098 143 429, Transurban Infrastructure Management Limited ABN 27 098 147 678 as responsible entity of Transurban Holding Trust, AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper, Tawreed Investments Limited and others dated on or about the Acquisition Date.

**"Sunset Date"** has the meaning given to it in the EWAG Works Deed.

**"SWC D&C Activities"** means all things which the State Works Contractor is, or may be, required to carry out or do:

- (a) in connection with the design and construction of the State AL Works; or
- (b) otherwise to comply with its obligations under the State Works Deed with respect to the State AL Works,

but does not include any PPP Co AL D&C Activities, any NB Project Activities or any EWAG Project Activities.

**"Tag"** means an electronic device provided by a Tollroad Service Provider to a user of a tollroad to enable the user to pay tolls on toll roads (including the Tollroad) by means of an electronic toll collection system.

**"Tag Interoperable"** means Interoperable for Tag Customers of TQ Operations or another Tollroad Service Provider.

**"Tax"** means any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any governmental authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing.

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

**"Temporary Works"** means any temporary physical works which a PPP Co, the State Works Contractor or the NB Works Contractor must design, supply, construct, install, produce or complete for the purpose of carrying out the D&C Activities.

**"Third Party Intellectual Property Rights"** means any Intellectual Property Rights that are not vested in any of:

- (a) the PPP Cos;
- (b) the D&C Contractor;
- (c) the O&M Contractor; or
- (d) an Associate of any of the entities referred to in (a), (b) or (c), excluding the entity engaged by a PPP Co or the D&C Contractor or any of them to design and supply any part or all of the Tolling System.

**"Third Party Interface Infrastructure"** means the infrastructure, facilities, services and land owned or controlled by the Interface Parties.

**"Third Party Material"** has the meaning given to it in clause 39.9(a)(i).

**"Toll"** means a toll levied for the use of the Tollroad (or any part of the Tollroad).

**"Toll Calculation Schedule"** means Schedule 6.

**"Tolling"** means detecting, identifying and tolling, and charging Tolls for the use of, or otherwise in connection with, the Tollroad as contemplated by this deed.

**"Tolling Declaration"** means the declaration in respect of the Tollroad under section 93 of the Transport Infrastructure Act by the Minister for Main Roads, Road Safety and Ports and Ports and Minister for Energy, Biofuels and Water Supply, as varied or replaced from time to time.

**"Tolling Services Agreement"** means the document entitled "Tolling Services Agreement" between TQ Operations and Queensland Motorways Services Pty Limited ACN 165 422 202 dated on or about the Acquisition Date.

**"Tolling System"**:

- (a) means, at any time, the physical, hardware, software, firmware and other aspects of the system proposed to be used or used (as the case may be) at that time for levying and collecting Tolls, in accordance with the Performance Specification; and
- (b) includes any billing systems, operating systems, customer relationship management system (including any call centre procedures and systems) and any other ancillary systems that are necessary or desirable for the full and proper operation of the Tolling System and the Tollroad.

**"Tolling System Completion"** means the stage when:

- (a) Tollroad Completion has been achieved;
- (b) the balance of the Project Works are complete, except for minor Defects which:
  - (i) do not prevent the Tolling System from being reasonably capable of being used and effectively and accurately operated for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (ii) do not prevent the Tollroad from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (iii) subject to clause 16.5(c), do not prevent the Busway from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (iv) subject to clause 16.6(c), do not prevent EWAG from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (v) the Independent Verifier determines that the relevant PPP Co has reasonable grounds for not promptly rectifying; and
  - (vi) can be corrected without prejudicing the convenient use of the Tolling System, the Tollroad and the Busway; and
- (c) each PPP Co, the State Works Contractor and the NB Works Contractor have done everything which this deed (including the Performance Specification), the State Works Deed, the NB Works Deed, the EWAG Works Deed and the IP Licence Deed requires the relevant PPP Co, the State Works Contractor or the NB Works Contractor to do as a condition precedent to Tolling System Completion.

**"Tollroad"** means the road, tunnel and other physical works, facilities, systems (including the Tolling System) and Public Utility Plant described as being required for the Tollroad in the Performance Specification (including section 2.3.1 of the Introduction document of the Performance Specification) including the Tollroad Control Centre and all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements on or in the Tollroad or on the Leased Area and to be called Airport Link or such other name as agreed to by the State.

**"Tollroad Area"** means the land described as such in the Site Access Schedule.

**"Tollroad Completion"** means the stage when:

- (a) the Tollroad (excluding the Tolling System), and everything else necessary to open the Tollroad (excluding the Tolling System) for the safe, efficient and continuous passage of vehicles, is complete except for minor Defects which:
  - (i) do not prevent the Tollroad (excluding the Tolling System) from being reasonably capable of being used for its intended purpose as specified in, or ascertainable from, the State Project Documents;
  - (ii) the Independent Verifier determines that the PPP Cos have reasonable grounds for not promptly rectifying; and
  - (iii) can be corrected without prejudicing the convenient use of the Tollroad for (excluding the Tolling System) the safe, efficient and continuous passage of vehicles;
- (b) subject to clause 16.5, NB Practical Completion has been achieved;
- (c) subject to clause 16.6, EWAG Practical Completion has been achieved; and
- (d) each PPP Co and the State Works Contractor have done everything which this deed (including the Performance Specification) and the State Works Deed requires the relevant PPP Co or the State Works Contractor to do as a condition precedent to Tollroad Completion excluding the Tolling System.

**"Tollroad Control Centre"** means the building, facilities, equipment and systems described in section 2.3.1(b)(ix) of the Introduction document of the Performance Specification, which will be located on the Tollroad Area.

**"Tollroad Opening Date"** means the earliest date on which the Tollroad is opened to traffic for the safe, efficient and continuous passage of vehicles in accordance with this deed.

**"Tollroad Service Provider"** means a provider of tolling services to Customers in connection with the use of, or entitlement to use, an Australian tollroad and, for the purposes of any Interoperability Agreement, includes any person who enters into the Interoperability Agreement.

**"Tollroad Systems"** means:

- (a) the Tolling System; and
- (b) any other system used or implemented by a PPP Co from time to time necessary or desirable for the full and proper operation of the Tollroad and/or managing the business of the Tollroad;

and, without limiting the generality of the foregoing, includes each item listed in Schedule 2 (Escrow Deposit Specification Form) of the IP Licence Deed, and any other items which the State nominates in writing to a PPP Co from time to time.

**"Tollroad Systems Supplier"** means, in respect of the Tollroad Systems, an entity (other than a PPP Co or the D&C Contractor) engaged by either a PPP Co or the D&C Contractor or both (as applicable) to design and supply any part or all of the Tollroad Systems (within the meaning given to that term under this deed and/or the D&C Contract, as applicable).

**"TQ Asset Trust Deed"** means the trust deed of the TQ APL Asset Trust, dated 23 November 2015.

**"TQ Holding Co"** means APL Hold Co Pty Limited ACN 609 262 624.

**"TQ Holding Trust"** means the trust known as "TQ APL Hold Trust" as settled under the trust deed executed by TQ Holding Trust Co dated 23 November 2015.

**"TQ Holding Trust Co"** means TQ APL Hold Co Pty Limited ACN 609 390 507.

**"TQ Invest Trust Co"** means Transurban Queensland Invest Pty Limited ACN 169 090 733 as trustee for the TQ Investment Trust.

**"TQ Invest Trust"** means the trust known as "Transurban Queensland Invest Trust" as settled under the trust deed executed by TQ Invest Trust Co and dated 14 April 2014.

**"Transaction Consent Deed"** means the document entitled "Transaction Consent Deed" between the State, the BrisConnections Parties, the Original State Works Contractor, BC FinCo, the Original NB Works Contractor, the Original Security Trustee, the Original Agent and the PPP Cos dated on or about the Acquisition Date.

**"Transport Infrastructure Act"** means the *Transport Infrastructure Act 1994* (Qld).

**"Trip"** has the meaning given to it in the Toll Calculation Schedule.

**"Uninsurable Force Majeure Event"** means a Force Majeure Event in respect of which the relevant PPP Co is not insured and:

- (a) insurance covering the Force Majeure Event is not available with a Reputable Insurer; or
- (b) the insurance premium for insurance covering the Force Majeure Event is at such a level or the terms and conditions are such that a reputable insurance broker acceptable to the parties certifies that in its reasonable opinion the risk is not generally being insured against with Reputable Insurers by prudent, competent and experienced concessionaires, designers, contractors and/or operators (as applicable) of tollroads or busways (as applicable).

**"Upstream Interface Agreements"** means the document entitled "State-QR Agreement" between the State and Queensland Rail dated the date of this deed.

**"User Administration Charges"** has the meaning given to that term in the Tolling Declaration.

**"User Charge"** means any charge, fee, deposit, prepayment, required account balance, impost or other amount imposed or required in connection with:

- (a) the use of, or the entitlement to use, the Tollroad, (or any part of the Tollroad) or any other tollroad; or
- (b) the provision of services (including account set up, top-up amounts and minimum usage amounts for Nominated Tolling Products) in connection with the use of, or the entitlement to use, the Tollroad (or any part of the Tollroad) or any other tollroad,

including User Administration Charges, but does not include a Toll.

**"Validity Period"** means, with respect to each PPP Cos' Modification Notice, the period of time after receipt by the State of PPP Cos' Modification Notice that the terms of PPP Cos' Modification Notice remain open for acceptance by the State. In each case such period should not be less than 20 Business Days unless it is reasonable in all of the circumstances.

**"WHS Legislation"** means the *Work Health & Safety Act 2011 (Qld)* and the *Work Health and Safety Regulation 2011 (Qld)*.

## 1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

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

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

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

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

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

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

(h) a reference to the Performance Specification includes all appendices, annexures, attachments and exhibits to it;

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

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

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

(l) a reference to "the date of this deed" or corresponding expressions means 2 June 2008; and

(m) a reference to the Asset Disposal Agreement is to the form of the document that was executed on 24 November 2015, subject to any amendments agreed to by the State.

### 1.3 Replacement body interpretation

Where a reference is made to any body or authority which ceases to exist ("**Former Body**"), that reference will be to that body or authority ("**Replacement Body**") which then serves substantially the same functions as the Former Body. Any reference to the president or other senior officer of the Former Body will be to the president or senior officer of the Replacement Body.

### 1.4 No bias against drafting party

Each provision of this deed will be interpreted without disadvantage to the party who (or whose representative) drafted that provision.

### 1.5 Business Day

If the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:

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

### 1.6 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by a PPP Co if it is certified as a true copy by a director, secretary or general manager of either PPP Co.

### 1.7 Order of precedence

- (a) **(This deed):** The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:
  - (i) the deed, excluding the schedules and exhibits;
  - (ii) the Environmental Documents; and
  - (iii) the schedules and the remaining exhibits,except to the extent that any part of the various documents comprising this deed impose a higher standard, quality, level of service or quantum than any other part of the various documents comprising this deed in which case the higher standard, quality, level of service or quantum prevails.
- (b) **(The NB Works Deed):** In the event of any inconsistency, ambiguity or discrepancy between the NB Works Deed and this deed this deed shall prevail to the extent that the inconsistency, ambiguity or discrepancy relates to the AL Works, the Returned Works, the Tollroad or the Maintained Non-Tollroad Works.
- (c) **(The EWAG Works Deed):** In the event of any inconsistency, ambiguity or discrepancy between the EWAG Works Deed and this deed, this deed shall prevail to the extent that the inconsistency, ambiguity or discrepancy relates to the AL Works, the Returned Works, the Tollroad or the Maintained Non-Tollroad Works.

## 1.8 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

## 1.9 Fitness for purpose

For the purpose of complying with any warranty or undertaking given by a PPP Co in this deed that the Tollroad or any part of it shall be "capable of being used for its intended purposes as specified in, or ascertainable from, the State Project Documents" (or any similar such words), a PPP Co shall not be required to change or supplement the:

- (a) diameter or volume of the portion of the AL Works comprising the tunnel and ventilation system; or
- (b) thickness of tunnel lining,

due solely to any change in any applicable standards or guidelines that takes effect after the date on which the Independent Verifier has verified that the relevant Stage 2 Design Documentation complies with the State Project Documents in accordance with clause 13.3(d).

## 1.10 Role of the PPP Cos

The parties agree that, notwithstanding any other provision of this deed or any other State Project Document:

- (a) **(Interface responsibility: general):** If and to the extent that any State Project Document does not clearly allocate to either TQ Trustee or TQ Operations the responsibility for performing a particular obligation under or observing a particular provision of the State Project Document, or does not clearly allocate the liability for a particular risk, that responsibility or liability will (as between the PPP Cos and the State and its Associates) be borne by TQ Operations.

If a State Project Document does not clearly allocate to either PPP Co the responsibility for carrying out a particular part of the Project Works, that responsibility will (as between the PPP Cos and the State and its Associates) be borne by TQ Operations.

- (b) **(Interface responsibility for Project Works):**
  - (i) Subject to clause 1.10(b)(ii), TQ Trustee must ensure that the Project Works interface properly, including from a design, construction and scheduling perspective and all risks in relation to any interface will (as between the PPP Cos and the State and its Associates) be borne by TQ Trustee.
  - (ii) Responsibility for the design, construction, scheduling and interfacing of the Tolling System will (as between the PPP Cos and the State and its Associates) be borne by TQ Operations, but without prejudice to the State's rights under the other provisions of this clause 1.10.
- (c) **(No excusing of performance):** Each PPP Co acknowledges and undertakes to the State and its Associates that no act, failure to act, omission or default by a PPP Co under any State Project Document will excuse the other PPP Co from performing any obligation under (or observing and complying with any provision of) the State Project Documents, or reduce the liability of the other PPP Co for any act, failure to

act, omission or default in the performance of any of its obligations under the State Project Documents.

- (d) **(Prohibitions and conditions apply to each PPP Co):** A PPP Co must not do, or cause or allow to be done anything which the other PPP Co is prohibited under a State Project Document from doing, causing or allowing to be done, as the case may be.

If any right of a PPP Co under a State Project Document (or under a consent or approval given by the State or any of its Associates pursuant to a State Project Document) is expressed to be subject to any condition, that condition applies also to the other PPP Co.

- (e) **(Acknowledgements, releases, consents, approvals, indemnities and assumption of risk):** If one PPP Co gives any acknowledgement, release, consent, approval or indemnity or assumes any risk under a State Project Document, the other PPP Co will not be entitled to assert (and waives any right that it may otherwise have to assert) any right or entitlement against the State or its Associates that the first PPP Co is not entitled to so assert by reason of that acknowledgement, release, consent, approval, indemnity or assumption of risk.

- (f) **(Knowledge or awareness of a PPP Co):** For the purposes of any reference in a State Project Document to a matter of which a PPP Co has or is deemed to have knowledge, the knowledge of one PPP Co will be deemed to be the knowledge of each PPP Co, and a PPP Co will not be entitled to assert that it has no knowledge of a matter of which the other PPP Co has or is deemed to have knowledge.

For the purposes of any reference in a State Project Document to a matter of which a PPP Co is aware or is deemed to be aware, one PPP Co being or being deemed to be aware of that matter will be deemed to be each PPP Co being or being deemed to be aware of that matter, and a PPP Co will not be entitled to assert that it was not aware of a matter of which the other PPP Co is aware or is deemed to be aware.

- (g) **(Processes and consents):** For the purposes of any provision of a State Project Document which contemplates any meeting, consultation or participation in any other process by either or both PPP Cos, or the giving of any approval or consent by either or both PPP Cos:

- (i) the PPP Cos appoint the representative of the PPP Cos specified in clause 6.5 or some other officer or employee of a PPP Co notified to the State as a single representative to act on behalf of the PPP Cos collectively in respect of that meeting, consultation or other process, or the giving of that approval or consent ("**PPP Co Appointee**");
- (ii) the State will not be required to deal with and will be entitled to disregard any purported participation by or purported approval or consent from any person other than the PPP Co Appointee;
- (iii) participation in that meeting, consultation or other process by a PPP Co Appointee will be deemed to be participation by both the PPP Cos, for their respective rights and obligations under the State Project Documents;
- (iv) an approval or consent given by a PPP Co Appointee will be deemed to be given by both PPP Cos, for their respective rights and obligations under the State Project Documents, without the State or its Associates

being required to enquire as to which PPP Co has the relevant right or obligation; and

- (v) each PPP Co will be bound by the outcome of that meeting, consultation or other process, or the approval or consent given in relation to its rights and obligations under the State Project Documents.
- (h) **(Payments and receipts):** For the purposes of any provision of a State Project Document under which a payment may be made, or received, by the State or its Associates, the PPP Cos or their respective Associates:
  - (i) any payment made to a PPP Co will be deemed, to the extent of that payment, to satisfy the relevant obligation of the payer to each PPP Co (to the extent of their respective rights under the State Project Documents) without the payer being required to enquire as to the respective entitlements of the PPP Cos in respect of the subject matter of that payment, and a receipt given by a PPP Co will bind both PPP Cos; and
  - (ii) the State and its Associates may receive a payment made by a PPP Co in or towards satisfaction of the obligations of either or both PPP Cos under the State Project Documents, without the payee being required to enquire as to the respective obligations of the PPP Cos in respect of the subject matter of that payment, and a receipt given by the payee to a PPP Co will be sufficient acknowledgment of the receipt of that payment as regards both PPP Cos.
- (i) **(Redress not increased):**
  - (i) Any redress or compensation owing to FinCo or either or both of the PPP Cos (as applicable) under or in accordance with the State Project Documents, including under clause 22, clause 26 and clause 41.7(b) will not, in aggregate, be more onerous to the State or its Associates than if the PPP Cos and FinCo had been a single legal entity.
  - (ii) Without limiting clause 1.10(i)(i), in determining the amount of any redress or compensation owing to either or both of the PPP Cos (as applicable) under the State Project Documents any dealing between a PPP Co and FinCo or any Related Body Corporate or Related Trust Entity of either PPP Co or FinCo will be ignored to the extent that it is not on arm's length commercial terms.
  - (iii) For the purposes of clause 1.10(i)(ii), any dealing between a PPP Co and FinCo or a Related Body Corporate or Related Trust Entity of either PPP Co or FinCo will be deemed to be not on arm's length terms to the extent of any difference in pricing or other terms between that dealing and the pricing or other terms that that PPP Co would be able to obtain if an equivalent transaction occurred between that PPP Co or FinCo and an unrelated third party.
- (j) **(Dispute resolution):**
  - (i) In the event that any matter or dispute between the State or its Associates and a PPP Co is determined under clause 44 or as otherwise agreed between those parties, that determination (or agreement, as applicable) will be binding upon the other PPP Co notwithstanding that it may not have participated in that determination or agreement, which must, within

20 Business Days of receipt of demand from the State or its Associates execute and deliver any amendment to the State Project Documents that has been determined (or agreed) between the State or its Associates and the relevant PPP Co in order to resolve that dispute.

- (ii) The PPP Cos appoint the representatives of the PPP Cos specified in clause 45.1 or some other officer or employee of a PPP Co notified to the State as a single representative to act on behalf of the PPP Cos collectively in dealing with any matter or dispute between the State or its Associates and a PPP Co, including where a notice has been given under clause 44.2(a) ("**Dispute Resolution Appointee**").
  - (iii) The State and its Associates will not be required to deal with and will be entitled to disregard any purported participation by any person other than the Dispute Resolution Appointee in any determination or agreement of a matter or dispute between the State or its Associates and a PPP Co.
  - (iv) If requested by the State, a PPP Co must participate at its cost in any dispute resolution procedures under this deed or any other State Project Document involving the State and the other PPP Co.
  - (v) A PPP Co will not be entitled to separately commence any dispute resolution procedure against the State under this deed or any other State Project Document to the extent that it relates to a Dispute which has already been initiated by the other PPP Co.
- (k) **(Disputes between PPP Cos):**
- (i) In the event of any matter or dispute between the PPP Cos that cannot be otherwise resolved, the PPP Cos will cause the matter or the dispute to be determined in accordance with clause 44, which will be construed as though the references to the State and a PPP Co are references to each PPP Co.
  - (ii) The PPP Cos must, prior to the commencement of any determination of the matter or dispute, notify the State of the matter or dispute.
  - (iii) The State and its Associates may, in their discretion, participate in the process to determine the matter or dispute, in which event any costs incurred by the State or its Associates will be borne by the PPP Cos.
  - (iv) The determination (or any participation by the State and its Associates in the determinations) of that matter or dispute between the PPP Cos will in no way, as between the State and its Associates and the PPP Cos, limit or affect the responsibilities or liabilities of the PPP Cos or the rights or remedies of the State and its Associates.
- (l) **(Ability to perform acts):** For the purposes of any provision of a State Project Document in which the ability of a PPP Co to perform an action (or the reasonableness of a PPP Co's actions) is relevant:
- (i) the PPP Cos will not be entitled to rely upon (and the State and its Associates will be entitled to ignore) the fact that assets and resources of each of the PPP Cos are separately owned; and
  - (ii) the collective assets and resources of the PPP Cos will be considered for this purpose.

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## **2. Conditions Precedent**

### **2.1 Conditions Precedent**

This deed will not commence unless and until each of the Conditions Precedent in Schedule 1 have been satisfied (or waived under clause 2.3), except for the provisions contained in:

- (a) clause 1 (Definitions and interpretation);
- (b) this clause 2;
- (c) clause 5 (Security Bonds);
- (d) not used;
- (e) clause 9.2 (Approvals);
- (f) clause 30 (Insurance);
- (g) clause 31 (Representations and warranties);
- (h) clause 32 (Each PPP Co to inform itself);
- (i) clause 33 (Restrictions on each PPP Co);
- (j) clause 34 (Assignment);
- (k) clause 35 (Amendments to Project Documents);
- (l) clause 36 (Refinancings);
- (m) clause 40 (Disclosure and publicity);
- (n) clause 44 (Dispute resolution);
- (o) clause 45 (Notices and time bar);
- (p) clause 46 (Governing law and jurisdiction);
- (q) clause 47 (Miscellaneous),

(each a "**Day 1 Clause**") which will commence on the date of this deed.

### **2.2 Satisfaction of Conditions Precedent**

- (a) The State must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of a PPP Co (or a PPP Co and the State) by the relevant Condition Precedent Deadline Date.
- (b) Each PPP Co must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the State (or the State and a PPP Co) by the relevant Condition Precedent Deadline Date.
- (c) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.

- (d) The party receiving a notice given under clause 2.2(c) will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (e) If the party receiving a notice given under clause 2.2(c) fails to give the other party a notice under clause 2.2(d) within 7 days, the Condition Precedent will be deemed to have been satisfied.
- (f) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must acknowledge in writing the fact that Financial Close has occurred.

### **2.3 Waiver of Conditions Precedent**

A Condition Precedent is waived if, and only if:

- (a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and
- (b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

### **2.4 Condition Precedent Deadline Dates**

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 11.59 pm on the relevant Condition Precedent Deadline Date, then either party may terminate this deed by notice in writing to the other party.
- (b) The period of the notice referred to in clause 2.4(a) will be not less than 5 Business Days and this deed will only be terminated if the Condition Precedent or Conditions Precedent in question are not satisfied (or waived under clause 2.3) within that period.
- (c) If this deed is terminated pursuant to this clause 2.4 then:
  - (i) each of the other Project Documents will be taken to have terminated at the time this deed is terminated;
  - (ii) the State will return any D&C Bonds, EWAG Bonds and NB Bonds provided by a PPP Co; and
  - (iii) no party will have any Claim against any other party under or in respect of the Project Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with the Projects, except for any Claim in relation to breaches of any Day 1 Clause.

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## **3. Concession Period**

### **3.1 Commencement date**

Except for Day 1 Clauses which commence on the date of this deed, this deed commences on the date of Financial Close.

### **3.2 Expiry date**

The Concession Period will end on the earlier of:

- (a) the date on which this deed is terminated under clause 8.7, clause 26.12 or clause 41; or
- (b) the 45th anniversary of the date of Financial Close, as varied under clause 23.1 or clause 26, if applicable.

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## **4. The Projects**

### **4.1 Grant of Concession**

The State grants the PPP Cos the Concession for the Concession Period subject to, and in accordance with, this deed.

### **4.2 Each PPP Co's primary obligations**

Each PPP Co agrees that:

- (a) each PPP Co must procure that FinCo finances the AL Works;
- (b) each PPP Co must design and construct the PPP Co AL Works and procure that the NB Works Contractor designs and constructs the NB Works and the EWAG Works;
- (c) each PPP Co must integrate and co-ordinate the design and construction of the PPP Co AL Works with the design and construction of the State AL Works and the NB Works;
- (d) each PPP Co must co-ordinate the design and construction of the AL Works with the design and construction of the EWAG Works;
- (e) each PPP Co must commission the PPP Co AL Works and the State AL Works and procure that the NB Works Contractor commissions the NB Works and the EWAG Works;
- (f) each PPP Co must:
  - (i) on the Date of EWAG Practical Completion, handover and procure that the NB Works Contractor hands over EWAG (other than BAC EWAG) to the State; and
  - (ii) on the Date of NB Practical Completion, handover and procure that the NB Works Contractor hands over the Busway to the State;
- (g) TQ Operations must operate the Tollroad;
- (h) TQ Operations must maintain and repair the Tollroad and the Maintained Non-Tollroad Works; and
- (i) TQ Trustee must handover the Tollroad and the Maintained Non-Tollroad Works at the end of the Concession Period,

subject to, and in accordance with the State Project Documents.

### **4.3 Project risk**

Except as otherwise expressly provided in this deed, the EWAG Works Deed or the NB Works Deed, each PPP Co:

- (a) accepts all risks associated with the Projects, including those specified in clause 24; and
- (b) will not be entitled to make any Claim against the State arising out of or in connection with such risks.

#### **4.4 The State AL Works**

Subject to clause 4.5, the State will procure the design and construction of the State AL Works in accordance with the Performance Specification and the State Works Deed.

#### **4.5 Each PPP Co's acknowledgments regarding the State AL Works**

Each PPP Co acknowledges and agrees that:

- (a) the State will enter into the State Works Deed which will require the State Works Contractor to procure the design and construction of the State AL Works;
- (b) subject to clauses 8.7, 8.8 and 9.5, the State has no liability whatsoever in respect of the State AL Works except as set out in the State Works Deed;
- (c) subject to clauses 8.7, 8.8 and 9.5, the State has no liability whatsoever to a PPP Co and each PPP Co has no Claim whatsoever against the State arising out of or in connection with the State AL Works, the SWC D&C Activities or the State Works Deed, including in respect of:
  - (i) any Defects in the State AL Works;
  - (ii) late completion of, or failure to complete, the State AL Works;
  - (iii) the State AL Works not being fit for their intended purposes; or
  - (iv) any non-compliance with any requirements applying to the State AL Works or the SWC D&C Activities;
- (d) it is not excused from any breach of its obligations under the Project Documents which arises as a result of any act or omission of:
  - (i) the State Works Contractor; or
  - (ii) any Associate of the State Works Contractor in carrying out the SWC D&C Activities,

except to the extent the breach results from the State's failure to comply with its obligations under the State Works Deed;
- (e) each PPP Co must indemnify the State in respect of any Loss or Claim brought against, suffered or incurred by the State arising out of or in connection with the State Works Deed other than payments which the State is expressly required to make under clause 4 (Payment) of the State Works Deed, or pursuant to clauses 8.7, 8.8 or 9.5 of this deed;
- (f) each PPP Co must integrate, interface and co-ordinate the design and construction of the PPP Co AL Works, and ensure that the NB Works Contractor integrates, interfaces and co-ordinates the design and construction of the NB Works and the EWAG Works with the design and construction of the State AL Works;

- (g) each PPP Co must supervise and manage the performance of the SWC D&C Activities to ensure that the Project Works (including the State AL Works) and the D&C Activities (including the SWC D&C Activities) comply with the requirements of this deed;
- (h) the nature and extent of the obligations and risks assumed by the respective PPP Cos under or in relation to the Project Documents are to be assessed as if:
  - (i) the State AL Works formed part of the PPP Co AL Works;
  - (ii) the State had no obligations in respect of the State AL Works; and
  - (iii) the SWC D&C Activities formed part of the PPP Co AL D&C Activities;
- (i) where a PPP Co has any obligation under this deed which relates to the performance of the SWC D&C Activities, that PPP Co must satisfy the obligation by supervising and managing the performance of the SWC D&C Activities; and
- (j) each PPP Co must provide the State Works Contractor with sufficient access to the Construction Site to enable the State Works Contractor to perform its obligations under the State Works Deed.

The parties acknowledge that the design and construction of the State AL Works will be treated as part of the D&C Activities under this deed, and the repair and maintenance of the State AL Works (other than any Returned Works) will be treated as part of the O&M Activities under this deed, for the purposes of determining the amount of any redress to be provided to a PPP Co under clause 26.

#### **4.6 Each PPP Co's acknowledgements regarding the NB Works and the EWAG Works**

Each PPP Co acknowledges and agrees that:

- (a) the State will enter into the NB Works Deed and the EWAG Works Deed which will require the NB Works Contractor to procure the design and construction of the NB Works and the EWAG Works respectively;
- (b) subject to the NB Works Deed, the EWAG Works Deed, the Agreement to Lease and this deed, the State has no liability whatsoever in respect of the NB Works or the EWAG Works;
- (c) subject to the NB Works Deed, the EWAG Works Deed, the Agreement to Lease and this deed, the State has no liability whatsoever to a PPP Co and each PPP Co has no Claim whatsoever against the State arising out of or in connection with the NB Works, the EWAG Works, the NB Project Activities, the EWAG Project Activities, the EWAG Works Deed or the NB Works Deed, including in respect of:
  - (i) any Defects in the NB Works or the EWAG Works;
  - (ii) late completion of, or failure to complete, the NB Works or the EWAG Works;
  - (iii) the NB Works or the EWAG Works not being fit for their intended purposes; or

- (iv) any non-compliance with any requirements applying to the NB Works, the EWAG Works, the NB Project Activities or the EWAG Project Activities;
- (d) it is not excused from any breach of its obligations under the Project Documents which arises as a result of any act or omission of:
- (i) the NB Works Contractor; or
  - (ii) any Associate of the NB Works Contractor in carrying out the NB Project Activities or the EWAG Project Activities,
- except to the extent the breach results from the State's failure to comply with its obligations under the NB Works Deed or the EWAG Works Deed;
- (e) each PPP Co must indemnify the State in respect of any Loss or Claim brought against, suffered or incurred by the State arising out of or in connection with the NB Project, the EWAG Project, the NB Works Deed or the EWAG Works Deed other than payments which the State is expressly required to make under clause 14 (Payment) of the NB Works Deed or clause 19 (Payments) of the EWAG Works Deed, or pursuant to any other provision of the NB Works Deed, the EWAG Works Deed, the Agreement to Lease or this deed;
- (f) each PPP Co must integrate, interface and co-ordinate the design and construction of the PPP Co AL Works with, and supervise and manage the performance of the SWC D&C Activities to ensure that the design and construction of the State AL Works integrates, interfaces and co-ordinates with, the design and construction of the NB Works;
- (g) each PPP Co must co-ordinate the design and construction of the PPP Co AL Works with, and supervise and manage the performance of the SWC D&C Activities and the NB Project Activities to ensure that the design and construction of the State AL Works and the NB Works is co-ordinated with the design and construction of the EWAG Works;
- (h) each PPP Co must supervise and manage the performance of the NB Project Activities and the EWAG Project Activities to ensure that the Project Works (including the NB Works and the EWAG Works) and the D&C Activities (including the NB Project Activities and the EWAG Project Activities) comply with the requirements of the State Project Documents;
- (i) the nature and extent of the obligations and risks assumed by the respective PPP Cos under or in relation to the Project Documents are to be assessed as if:
- (i) the NB Works and the EWAG Works formed part of the PPP Co AL Works; and
  - (ii) the NB Project Activities and the EWAG Project Activities form part of the PPP Co AL D&C Activities;
- (j) where a PPP Co has any obligation under this deed which relates to the performance of the NB Project Activities or the EWAG Project Activities, that PPP Co must satisfy the obligation by supervising and managing the performance of the NB Project Activities and the EWAG Project Activities; and

- (k) each PPP Co must provide the NB Works Contractor with sufficient access to the Construction Site to enable the NB Works Contractor to perform its obligations under the NB Works Deed and the EWAG Works Deed.

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## 5. Security Bonds

### 5.1 Provision of Bonds

- (a) **(D&C Bond):** TQ Trustee must provide the State with:
  - (i) a bond for \$10 million; or
  - (ii) bonds that in aggregate total \$10 million.
- (b) **(NB Bonds):** the PPP Cos must provide the State with bonds for \$20 million comprising:
  - (i) a bond for \$10 million; and
  - (ii) a bond for \$10 million.
- (c) **(EWAG Bonds):** the PPP Cos must provide the State with bonds for \$13.5 million comprising:
  - (i) a bond for \$6.75 million; and
  - (ii) a bond for \$6.75 million.
- (d) **(O&M Bond):** TQ Operations must provide the State with one or more bonds as required under clause 19.10.
- (e) **(Handover Bond):** Each PPP Co may provide the State with a Handover Bond so as to fulfil its obligations under clause 43.1(d)(ii).

### 5.2 Requirements for Bonds

Each Bond must:

- (a) be in the form of Schedule 2 (or such other form as the State may approve);
- (b) be in favour of the State;
- (c) be a continuing liability without an expiry date;
- (d) be at all times provided by a bank acceptable to the State that maintains the Required Rating;
- (e) not be given by or for the D&C Contractor, the O&M Contractor or their respective subcontractors;
- (f) be payable at an office of the issuer in Brisbane (or such other place as the State may approve); and
- (g) be, where required, duly stamped.

### 5.3 Replacement of Bonds

If the issuer of a Bond ceases to have the Required Rating, then the relevant PPP Co must:

- (a) promptly notify the State of that circumstance; and
- (b) within 20 Business Days of being requested to do so, procure the issue to the State of a replacement bond which satisfies the requirements of clause 5.2.

### 5.4 No injunction

The State may make a demand under a Bond at any time. Each PPP Co must not (and must ensure that the NB Works Contractor does not) take any steps to injunct or otherwise restrain:

- (a) the issuer of a Bond from paying the State pursuant to the Bond;
- (b) the State from making a demand or receiving payment under a Bond; or
- (c) the State using the proceeds of a Bond.

### 5.5 Proceeds of Bonds

The State may use the proceeds of any Bond to reimburse it for any Loss, and in payment of any other moneys owing by a PPP Co or the NB Works Contractor (including monies owing under any indemnity).

Any proceeds remaining will be repaid to a PPP Co in return for a replacement bond for the amount repaid which satisfies the requirements of clause 5.2. The replacement bond will be regulated by this deed as if it were the Bond the State made the demand on.

### 5.6 No interest

The State is not obliged to pay a PPP Co interest on a Bond or the proceeds of a Bond.

### 5.7 No trust

If the State makes a demand under a Bond, it does not hold the proceeds on trust.

### 5.8 Release of Bonds

Subject to its rights to have recourse to the Bonds, the State must release:

- (a) **(D&C Bond):** the D&C Bond within 20 Business Days after the later of:
  - (i) the expiry of the last Defects Liability Period to expire; and
  - (ii) the correction of all Defects in the Returned Facilities the subject of a notice under clause 18.1(b);
- (b) **(NB Bonds):** with respect to the NB Bonds:
  - (i) one of the bonds for \$10 million within 20 Business Days of the Date of NB Final Completion; and
  - (ii) the balance of the NB Bonds within 20 Business Days after the later of:
    - A. the expiry of the last NB Defects Liability Period to expire; and

- B. the correction of all Defects in the Busway the subject of a notice under clause 11.1(b) (Correction of Defects during NB Defects Liability Period) of the NB Works Deed;
- (c) **(EWAG Bonds):** with respect to the EWAG Bonds:
  - (i) one of the bonds for \$6.75 million within 20 Business Days of the date of EWAG Final Completion; and
  - (ii) the balance of the EWAG Bonds within 20 Business Days after the later of:
    - A. the expiry of the last EWAG Defects Liability Period to expire; and
    - B. the correction of all Defects in EWAG, the subject of a notice under clause 16.1(b) (Correction of Defects during EWAG Defects Liability Period) of the EWAG Works Deed;
- (d) **(O&M Bond):** any O&M Bond within 20 Business Days after the Handover Date; and
- (e) **(Handover Bond):** any Handover Bond within 12 months after the Handover Date.

## 5.9 Quantum of security

The parties acknowledge and agree that this deed is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building Services Authority Act 1991* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security and retention moneys is not to be more than 5% of the contract price, unless the contract expressly provides otherwise. Under this deed, the quantum of security moneys to be provided by the PPP Cos is governed by this clause 5.

*Initialled for and on behalf of TQ Trustee:* .....

*Initialled for and on behalf of TQ Operations:* .....

*Initialled for and on behalf of the State:* .....

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## 6. Role of parties

### 6.1 The State as an Authority

- (a) **(No restriction on statutory functions):** Subject to clause 6.1(b), each PPP Co acknowledges and agrees that:
  - (i) nothing in the State Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State to exercise any of its statutory functions or powers; and
  - (ii) anything which the State does, fails to do, or purports to do, pursuant to its statutory functions or powers or in the course of the creation or development of its policies and procedures and strategic decisions will be deemed not to be an act or omission by the State under the State Project Documents and will not entitle a PPP Co to make any Claim against the State arising out of the subject matter of this deed or the other State Project Documents.

- (b) **(Liability for breach):** Clause 6.1(a) does not, however, limit any liability which the State would have had to either PPP Co under any State Project Document as a result of a breach by the State of a term of any State Project Document but for clause 6.1(a).

## 6.2 Other Authorities

Each PPP Co acknowledges and agrees that:

- (a) there are Authorities (other than the State) with jurisdiction over aspects of the Project Activities and parts of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas;
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Project Activities; and
- (c) except as otherwise provided in this deed, each PPP Co bears the full risk of all occurrences of the kind referred to in clause 6.2(b) and will not be entitled to make any Claim against the State arising out of or in any way in connection with such occurrences.

## 6.3 No partnership, joint venture or other fiduciary relationship

Neither this deed nor any other State Project Document creates a partnership, joint venture or fiduciary relationship between the State and a PPP Co.

## 6.4 The State's representatives

- (a) The State:
  - (i) may appoint a person to be its representative for any purpose under this deed, the EWAG Works Deed or the NB Works Deed;
  - (ii) may at any time replace any person appointed as a representative, in which event the State may appoint another person as a representative; and
  - (iii) must give written notice of all appointments under clauses 6.4(a)(i) and 6.4(a)(ii) to the PPP Cos.

The State may not appoint more than 1 person to discharge the same function or functions under this deed , the EWAG Works Deed or the NB Works Deed.

- (b) Each PPP Co acknowledges and agrees that any person appointed by the State as a representative acts at all times as the agent of the State and is subject to the directions of the State.
- (c) Each PPP Co must comply with all directions, instructions and other notices given or purported to be given under this deed , the EWAG Works Deed or the NB Works Deed by a person appointed by the State as its representative.
- (d) Unless expressly provided otherwise in this deed , the EWAG Works Deed or the NB Works Deed, a representative of the State appointed pursuant to this clause 6.4 is not obliged to review, or comment upon, any documentation or information which a PPP Co gives to the State in respect of the Projects.

## 6.5 PPP Cos' representatives

- (a) The PPP Cos must within 5 Business Days of the date of Financial Close give notice in writing to the State in which it nominates the persons that will act as a representative of and be authorised to act on behalf of it in discharging its functions under this deed.
- (b) Each PPP Co may nominate more than one such person, and if so, it must in its written notice specify the functions which each person is authorised to discharge. A PPP Co may not (and must procure that the NB Works Contractor does not) nominate more than one person to discharge the same function or functions under this deed, the EWAG Works Deed or the NB Works Deed.
- (c) Each PPP Co may by notice in writing to the State substitute a person appointed under this clause with another person.

## 6.6 Senior Project Group

- (a) **(Composition):** A Senior Project Group must be established consisting of:
  - (i) one representative of the State appointed under clause 6.4;
  - (ii) one representative of the PPP Cos and the NB Works Contractor appointed under clause 6.5;
  - (iii) 2 persons from each party holding positions more senior than the persons referred to in clauses 6.6(a)(i) and 6.6(a)(ii); and
  - (iv) such other persons as the parties may from time to time agree.
- (b) **(Delegates):** The persons referred to in clauses 6.6(a)(i), 6.6(a)(ii) and 6.6(a)(iii) may appoint delegates to attend Senior Project Group meetings in their absence.
- (c) **(Objectives):** The objectives of the Senior Project Group are to:
  - (i) monitor the overall progress of the Projects;
  - (ii) assist with the resolution of any matters referred to the Senior Project Group by a party; and
  - (iii) review progress reports provided by the PPP Cos in accordance with the Documentation Schedule.
- (d) **(Frequency of meetings):** The Senior Project Group will meet monthly before the Date of Close-Out and at times requested by either party after that.
- (e) **(Administration):** The State will convene and chair meetings of the Senior Project Group and will take the minutes of all meetings and distribute the minutes to the members of the Senior Project Group.
- (f) **(The State may require certain representatives to attend):** At the State's request, the PPP Cos must procure the attendance of representatives of the Independent Verifier, the D&C Contractor, the O&M Contractor and/or the Debt Financiers at meetings of the Senior Project Group as observers. The State is also entitled to have a representative of the State or any Authority attend meetings as observers.

- (g) **(The PPP Cos may bring certain representatives):** The PPP Cos are entitled to have a representative of the D&C Contractor and/or the O&M Contractor attend any meeting of the Senior Project Group as an observer.
- (h) **(No legal responsibilities or powers):** The Senior Project Group will have no legal responsibilities. Nothing which occurs during a meeting of the Senior Project Group will:
  - (i) relieve a PPP Co from, or alter or affect, a PPP Co's liabilities or responsibilities whether under the State Project Documents or otherwise according to law;
  - (ii) prejudice the State's rights against a PPP Co whether under the State Project Documents or otherwise according to law; or
  - (iii) be construed as a direction by the State to do or not to do anything.

## 6.7 Independent Verifier

- (a) **(Appointment):** The State, the PPP Cos, the State Works Contractor, the NB Works Contractor and the Security Trustee have engaged, or will engage, the Independent Verifier on the terms of the Independent Verifier Agreement.
- (b) **(Role):** The role and functions of the Independent Verifier are set out in the Independent Verifier Agreement. They include:
  - (i) verifying that the Design Documentation submitted by each PPP Co complies with the requirements of the State Project Documents (including the Performance Specification) and, if the Design Documentation does comply with the requirements of the State Project Documents, issuing a certificate (in the form set out in the Certification Schedule) confirming that the Stage 2 Design Documentation complies with the requirements of the State Project Documents;
  - (ii) verifying that the Project Works are being constructed in accordance with the requirements of this deed (including the Performance Specification), the State Works Deed, the EWAG Works Deed and the NB Works Deed and, if the Project Works have been so constructed, issuing a certificate (in the form set out in the Certification Schedule) confirming that the Project Works comply with the requirements of the State Project Documents;
  - (iii) Not used;
  - (iv) verifying payment claims and the value of work completed by the PPP Cos and the NB Works Contractor under this deed, the EWAG Works Deed and the NB Works Deed, and providing a payment statement in accordance with the requirements of those documents;
  - (v) issuing such certificates as are set out in the Certification Schedule and the State Works Deed to be issued by the Independent Verifier (in the form set out in the Certification Schedule or the State Works Deed, as applicable);
  - (vi) determining whether or not Tollroad Completion, Tolling System Completion, Payment Claim Completion, EWAG Practical Completion, NB Practical Completion, EWAG Final Completion, NB Final

Completion or Close-Out has been achieved and, if Tollroad Completion, Tolling System Completion, Payment Claim Completion, EWAG Practical Completion, NB Practical Completion, EWAG Final Completion, NB Final Completion or Close-Out have been achieved, issuing the relevant certificate;

- (vii) resolving disputes in relation to Defects;
  - (viii) verifying that TQ Operations' proposed Customer Service Roll Out Program is likely to result in TQ Operations being able to comply with its obligations to provide Customer Services and address Customer Complaints as required under this deed;
  - (ix) if the Independent Verifier's appointment has not ceased when a Customer Service Audit is to be carried out, carrying out the Customer Service Audit; and
  - (x) making determinations on matters that this deed, the State Works Deed, the EWAG Works Deed and the NB Works Deed expressly requires to be determined by the Independent Verifier.
- (c) **(Costs):** The costs of the Independent Verifier will be borne equally by the State and the PPP Cos subject to and in accordance with the Independent Verifier Agreement.
- (d) **(Independence):** The Independent Verifier is obliged to act independently of the State, the Security Trustee, the State Works Contractor, the NB Works Contractor, the PPP Cos, and their respective Associates.
- (e) **(Compliance):** Each PPP Co must:
- (i) ensure that the Independent Verifier is provided with all information, documents and access to premises necessary to enable the Independent Verifier to perform its role and functions; and
  - (ii) otherwise comply with all of its obligations under the Independent Verifier Agreement.
- (f) **(Certificates):** Where contemplated in any certificate which the Independent Verifier is required to provide pursuant to the Certification Schedule or the State Works Deed, the Independent Verifier must in that certificate address any matters required by the State.
- (g) **(No approval):** Subject to clauses 16.4(a) and 17.2(a), a certificate given by the Independent Verifier will not:
- (i) constitute an approval by the State of a PPP Co's performance of its obligations under this deed or the NB Works Contractor's performance of its obligations under the NB Works Deed or the EWAG Works Deed;
  - (ii) be taken as an admission or evidence that the Design Documentation or Project Works comply with the State Project Documents; or
  - (iii) prejudice any rights or powers of the State whether under a State Project Document or otherwise according to Law, including any rights which the State may have in respect of Defects.

- (h) **(Appointment and replacement):** If the Independent Verifier Agreement is terminated in accordance with its terms or if the Independent Verifier ceases to act as the Independent Verifier for the purposes of the State Project Documents, the State and the PPP Cos must engage another person to act as Independent Verifier on substantially the same terms as the Independent Verifier Agreement, provided that the independent verifier to be engaged must:
  - (i) be reasonably acceptable to the State and the PPP Cos;
  - (ii) have appropriate qualifications and experience;
  - (iii) have no interest or duty which conflicts or may conflict with its functions as an independent verifier; and
  - (iv) not be, or have been, engaged by a PPP Co or its Associates in connection with the Projects.

## 6.8 Proof Engineer and Construction Verifier

- (a) **(Appointment):** The PPP Cos must:
  - (i) engage directly the Proof Engineer and Construction Verifier; and
  - (ii) ensure that where the engagement of the Proof Engineer and Construction Verifier is terminated or otherwise ceases, it engages another person to act as Proof Engineer and Construction Verifier.
- (b) **(Approval):** Any Proof Engineer and Construction Verifier appointed by the PPP Cos under clause 6.8(a) must:
  - (i) be reasonably acceptable to the State;
  - (ii) have appropriate qualifications and experience; and
  - (iii) be engaged on terms reasonably acceptable to the State.
- (c) **(Obligations):** Each PPP Co must ensure that the Proof Engineer and Construction Verifier:
  - (i) properly complies with the requirements of the Proof Engineer and Construction Verifier set out in the State Project Documents; and
  - (ii) provides such information, assistance and documentation to the Independent Verifier and gives such access to the Independent Verifier (and any person authorised by the Independent Verifier) as may be reasonably required by the Independent Verifier (and any person authorised by the Independent Verifier) for the purpose of performing its role and functions under this deed and the Independent Verifier Agreement.

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## 7. Quality

### 7.1 Quality system

- (a) The PPP Cos must implement a quality system for the management of all aspects of their respective obligations under this deed and the NB Works Contractor's obligations under the NB Works Deed and the EWAG Works Deed and in

accordance with the requirements of Annexure 10 of the Performance Specification and the Quality Management Plan.

- (b) The PPP Cos must develop and implement a "Quality Management Plan" in accordance with Annexure 9 and Annexure 10 to the Performance Specification.
- (c) The PPP Cos must provide to the State and, where applicable, the Independent Verifier, the certificates required by the Certification Schedule.

## **7.2 Quality management and certification**

- (a) The State and each PPP Co acknowledge that the project delivery method chosen for the Projects as set out in the State Project Documents:
  - (i) requires:
    - A. each PPP Co to assume responsibility for all aspects of quality of the D&C Activities and for the durability of the Project Works; and
    - B. TQ Operations to assume responsibility for all aspects of quality of the O&M Activities and for the durability of the Tollroad and Maintained Non-Tollroad Works;
  - (ii) allows the Independent Verifier to observe, monitor, audit and test all aspects of the suitability and adequacy of the Project Activities and the quality and durability of the Project Works, the Tollroad and the Maintained Non-Tollroad Works to ensure compliance with the requirements of the State Project Documents;
  - (iii) requires the Independent Verifier by reviewing and assessing the suitability and adequacy of the Project Activities and the quality and durability of the Project Works, the Tollroad and the Maintained Non-Tollroad Works, to verify each PPP Co's, the State Works Contractor's and the NB Works Contractor's compliance with the requirements of the State Project Documents; and
  - (iv) allows the State to monitor compliance of the Project Activities with the requirements of the State Project Documents.
- (b) The PPP Cos must ensure that a Quality Manager is engaged who must:
  - (i) independently certify the effectiveness and integrity of each PPP Co's and the NB Works Contractor's quality systems in achieving conformance with the requirements of this deed, the EWAG Works Deed and the NB Works Deed; and
  - (ii) report to the State and the Independent Verifier on quality issues in accordance with the requirements of this deed, the EWAG Works Deed and the NB Works Deed.
- (c) The Independent Verifier is required to carry out the activities referred to in clauses 7.2(a)(ii) and 7.2(a)(iii) which obligations will end on the date which is 1 month after the Last DLP.

### 7.3 Project quality non-conformance

- (a) Each PPP Co must comply with the procedure for non-conformances set out in the Performance Specification and the Quality Management Plan.
- (b) Corrective actions implemented under each PPP Co's and the NB Works Contractor's quality system must comply with the requirements of this deed including the Performance Specification, the EWAG Works Deed and the NB Works Deed.
- (c) Each PPP Co must promptly issue all documents relating to quality non-conformances to the Independent Verifier and the State.

### 7.4 Monitoring and audits

- (a) **(Regular audits):** Each PPP Co must:
  - (i) have its compliance with the Quality Management Plan, Design and Construction Environmental Management Plan, Community and Consultation Management Plan and Health and Safety Management Plan audited at intervals not exceeding 6 months during the D&C Phase and not exceeding 12 months thereafter at its cost by an independent auditor who is acceptable to the State;
  - (ii) permit representatives of the State and the Independent Verifier to be present during such audits; and
  - (iii) deliver 2 copies of each audit report to the State and the Independent Verifier within 5 Business Days of its completion.
- (b) **(State to request audits):** Without limiting clause 7.4(a), the State may, if it is of the reasonable opinion that a PPP Co has not, or is not, complying with the Quality Management Plan, Design and Construction Environmental Management Plan, Community and Consultation Management Plan or Health and Safety Management Plan, request the Independent Verifier to conduct an audit of that PPP Co's compliance with such Project Plan or Project Plans.
- (c) **(Independent Verifier audits):** Where the Independent Verifier is requested by the State to conduct an audit under clause 7.4(b):
  - (i) the Independent Verifier will conduct such audit as soon as practicable;
  - (ii) representatives of the State or the relevant PPP Co may attend such audit; and
  - (iii) the results of such audit will be provided by the Independent Verifier to the State and the PPP Cos as soon as practicable following completion of the audit.

## 7.5 The State's right to enter, inspect and test

- (a) **(Right of entry):** The State and any person authorised by it may:
- (i) during Business Hours or upon giving reasonable notice to a PPP Co (except in the case of an emergency when no notice is required), enter the Project Areas; and
  - (ii) exercise this right of entry for the purposes of:
    - A. observing the Project Activities and monitoring compliance by each PPP Co, the State Works Contractor and the NB Works Contractor with their respective obligations under the Project Documents;
    - B. inspecting or testing any part of the Project Works, the Tollroad or the Maintained Non-Tollroad Works; and
    - C. exercising any right (including any step-in right) or performing any obligation which the State has under any Project Document.

The power to test any part of the Project Works, the Tollroad or the Maintained Non-Tollroad Works includes the power to carry out tests on any part of the Project Works, the Tollroad or the Maintained Non-Tollroad Works whether or not those tests are otherwise required by this deed and whether or not the work the subject of those tests has been certified by the Independent Verifier as compliant with the requirements of this deed.

- (b) **(Conditions of access):** When the State exercises or purports to exercise this right of entry, the State must:
- (i) observe (and ensure that any such authorised person observes) rules or requirements of a PPP Co, as to safety or security on the Project Areas, which are applied generally by that PPP Co;
  - (ii) not unnecessarily delay (and ensure that any authorised person does not unnecessarily delay) the performance of the Project Activities; and
  - (iii) not damage (and ensure that any authorised person does not damage) the Project Works, the Tollroad or the Maintained Non-Tollroad Works, in connection with the exercise or purported exercise of rights under this clause 7.5.
- (c) **(Each PPP Co to assist):** Each PPP Co must give such assistance as is reasonably required by the State in respect of any inspection or testing under clause 7.5(a), including:
- (i) providing access to such part of the Project Works, the Tollroad or the Maintained Non-Tollroad Works, and all relevant Design Documentation as may be required by the State;
  - (ii) preparing samples of materials used in connection with the Project Works or the Tollroad or the Maintained Non-Tollroad Works, to the reasonable satisfaction of the State;

- (iii) forwarding the samples prepared under clause 7.5(c)(ii) to the State or such other place or person notified by the State; and
  - (iv) if requested by the State, carrying out any tests (including tests not otherwise required by this deed) and providing the results of those tests to the State.
- (d) **(Works not to be covered up):**
- (i) The State may direct that any part of the Project Works must not be covered up or made inaccessible without the State's prior approval, which will not be unreasonably withheld or delayed.
  - (ii) Where a direction has been given under clause 7.5(d)(i) and a part of the Project Works has been covered up or made inaccessible without the State's prior approval and the State wishes to inspect or test this part of the Project Works, all costs and expenses associated with uncovering or making accessible such part of the Project Works must be borne by the PPP Co responsible for those Project Works.
- (e) **(Costs of inspection or testing):** The reasonable costs incurred by a PPP Co in connection with any inspection or test conducted at the State's direction under this clause 7.5 will be paid or reimbursed by the State, unless:
- (i) the inspection or test reveals any Defect;
  - (ii) the test is in respect of work covered up or made inaccessible without the State's prior approval where such approval was required;
  - (iii) the test is upon work undertaken to correct or overcome a Defect;
  - (iv) the inspection or test is required by D&C Best Practices or O&M Best Practices; or
  - (v) the inspection or test was required by this deed, the EWAG Works Deed or the NB Works Deed to be carried out by a PPP Co or the NB Works Contractor,

in which case, as between the State and the PPP Cos, those costs will be borne by the PPP Cos (or if the cost relates to a particular PPP Co, that PPP Co) and any reasonable costs incurred by the State in connection with those tests will be a debt due from the relevant PPP Co to the State.

- (f) **(No obligation on the State):** Each PPP Co acknowledges that:
- (i) the State owes no duty to a PPP Co to:
    - A. inspect the Project Activities; or
    - B. review the Project Activities, the Project Works, the Tollroad or the Maintained Non-Tollroad Works for errors, omissions or compliance with the requirements of this deed, the EWAG Works Deed or the NB Works Deed if it does so inspect; and
  - (ii) no inspection of the Project Activities or review of the Project Works, the Tollroad or the Maintained Non-Tollroad Works by the State will in any way lessen or otherwise affect:

- A. a PPP Co's or the NB Works Contractor's obligations or liabilities whether under this deed, the EWAG Works Deed or the NB Works Deed or otherwise according to Law; or
  - B. the State's rights against a PPP Co or the NB Works Contractor whether under this deed, the EWAG Works Deed or the NB Works Deed or otherwise according to Law.
- (g) **(Defects):** Defects must be dealt with in accordance with clause 14.3.
- (h) **(Certifications):** If the results of any inspection or test demonstrate that work which has been certified by a PPP Co, the NB Works Contractor, the Designer, the Proof Engineer and Construction Verifier or the Independent Verifier as compliant with the requirements of this deed is actually not compliant:
- (i) the relevant certifications will be void to the extent of the non-compliance; and
  - (ii) the process for the issue of the relevant certifications will reapply.

## 8. Land

### 8.1 Access to and from Licensed Construction Areas

Each PPP Co is responsible for gaining access to and from the Licensed Construction Areas and will not be entitled to make any Claim against the State in connection with access, or failure to gain or delay in gaining access, to and from the Licensed Construction Areas unless the State or its Associates have unlawfully refused or delayed such access.

### 8.2 Extra Land

- (a) **(Each PPP Co to obtain):** Without limiting clause 8.1, each PPP Co must procure for itself and at its own cost the occupation or use of or relevant rights over any land in addition to the Licensed Construction Areas which is necessary or which it may deem requisite or necessary for the Project Activities, including:
- (i) any land in addition to the Licensed Construction Areas required for the Affected Road Works and the PUP Works; and
  - (ii) the BAC Land.
- ("Extra Land").**
- (b) **(Release):** If it obtains any rights over any Extra Land, the relevant PPP Co must:
- (i) provide the State with a properly executed release from all liability arising out of or in respect of the Project Works or the Project Activities connected with the Extra Land from any person having an interest in such land (except for any liability the State may have pursuant to or in accordance with any agreement it is a party to with such person), on terms satisfactory to the State; or
  - (ii) indemnify the State from all liability to any person having an interest in such land, on terms satisfactory to the State,
- as a condition precedent to Tollroad Completion.

- (c) **(Use and rehabilitation):** Each PPP Co must ensure that:
- (i) the use; and
  - (ii) the rehabilitation,
- of Extra Land is to the satisfaction of the owner of the land, any lessee of the land, the State and all relevant Authorities.
- (d) **(Risk):** Each PPP Co acknowledges that:
- (i) integration of the requirements for access to Extra Land is at the sole risk of each PPP Co; and
  - (ii) the State will not have any liability to a PPP Co (in so far as is permitted by law) arising out of or in any way in connection with:
    - A. identifying and obtaining access to Extra Land; or
    - B. any delay, additional costs or other effects on the Project Activities related to the ability of a PPP Co or its Associates to obtain access to Extra Land.

### 8.3 Condition of land

- (a) **(No representation or warranty):** The State makes no representation and gives no warranty in respect of:
- (i) the condition or state of repair of the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas or any Extra Land;
  - (ii) any structure or other thing on, above or adjacent to, or under the surface of the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas or any Extra Land; or
  - (iii) the existence, location, condition or availability of any Public Utility Plant.
- (b) **(Each PPP Co accepts condition of land):** Each PPP Co accepts the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas and any structures or other things on, above or adjacent to, or under the surface of, the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas in its present condition and state of repair and subject to:
- (i) all defects, including all sub-surface conditions;
  - (ii) any Contamination, Pollution, Industrial Waste or Hazardous Substances, whether or not known to the State, any of the State's Associates, or any Authority;
  - (iii) all easements and rights of way in favour of any Authority or other person; and
  - (iv) any Artefacts or third party claims or rights in respect of Artefacts, historic sites or buildings or sacred sites.

## 8.4 Permitted use

A PPP Co must not use or permit the use of the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas or any part of them for any purpose other than as permitted under this deed, the EWAG Works Deed, the NB Works Deed, the Agreement to Lease or the Lease.

## 8.5 Environmental issues

Each PPP Co must:

- (a) **(No improper use):** not use the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas, or allow them, during any period during which a PPP Co is entitled to use or occupy them, to be used, so that:
  - (i) any Industrial Waste or Hazardous Substance is abandoned or dumped on the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas;
  - (ii) except as authorised by any Approval (including to the extent applicable, the Planning Approval), any Industrial Waste or Hazardous Substance is handled, disposed of, disturbed, discharged or released in a manner which is likely to cause an Environmental Hazard; and
  - (iii) except as authorised by any Approval (including to the extent applicable the Planning Approval), any other substance is handled, disposed of, disturbed, discharged, released, deposited to, or emanates from, the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas such that a state of Contamination occurs;
- (b) **(Be environmentally responsible):** at all times carry out, and ensure that its Associates carry out, the Project Activities:
  - (i) in an environmentally responsible manner and so as to protect the Environment and take all reasonable and practicable measures to prevent or minimise an Environmental Hazard; and
  - (ii) in accordance with the Environmental Documents and the Design and Construction Environmental Management Plan;
- (c) **(Comply with Environmental Documents):** without limiting each PPP Co's other obligations under this deed, comply with, and carry out and fulfil, and ensure that its Associates in carrying out the Project Activities comply with, carry out and fulfil, the conditions and requirements of all Environmental Documents and the Design and Construction Environmental Management Plan, including those conditions and requirements which the State is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil;
- (d) **(Comply with Environmental Laws):** without limiting clause 9.1, comply with, and ensure that its Associates in carrying out the Project Activities comply with, all Laws relating to the Environment;
- (e) **(Notification):** immediately notify the State in writing of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents or the Design and Construction Environmental Management Plan or any Law relating to the

Environment upon discovery of any Environmental Hazard in the carrying out of the Project Activities; and

- (f) **(Indemnity):** indemnify the State from and against any Claim or Loss brought against, suffered or incurred by the State arising out of or in any way in connection with a breach by that PPP Co of its obligations under this clause 8.5.

## 8.6 Contamination

- (a) **(Discovery):** If a PPP Co discovers any Contamination in, on or under the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas (whether or not that PPP Co, its Associates or their sub-contractors have caused or contributed to that Contamination), it must notify the State as soon as practicable, but nevertheless within 5 Business Days after the discovery of the Contamination.
- (b) **(Each PPP Co responsible for notification):** If a PPP Co becomes aware of any Contamination in, on or under the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas (whether or not a PPP Co, its Associates or their sub-contractors have caused or contributed to the Contamination), it must give any notice required by Law relating to the Environment.
- (c) **(Contamination Notice relating to Tollroad Area, EWAG Area, Busway Area, Leased Area and Extra Land):** Subject to clause 8.6(f), each PPP Co must comply (and ensure that each of its Associates in carrying out the Project Activities, complies) with any Contamination Notice relating to Contamination on, in, under, over or that emanated or is emanating from the Tollroad Area, the EWAG Area, the Busway Area, the Leased Area or the Extra Land, regardless of whether:
  - (i) the Contamination Notice is addressed to the State, a PPP Co or some other person; and
  - (ii) the Contamination occurred before or after a PPP Co or its Associates were given access to the relevant land,

provided however that if the Contamination Notice:

- (iii) relates to Contamination that is on, or over, the surface of any land that lies above the underground portion of any of the Tollroad Area, the EWAG Area, the Busway Area, the Leased Area or the Extra Land;
- (iv) is received after the Date of NB Practical Completion and relates to Contamination that is on, in, under, over or that emanated or is emanating from the Busway Area or the Extra Land (to the extent such Extra Land is used for the Busway or NB Works); or
- (v) is received after the Date of EWAG Practical Completion and relates to Contamination that is on, under, over or that emanated or is emanating from the EWAG Area or the Extra Land (to the extent such Extra Land is used for EWAG or the EWAG Works),

then a PPP Co shall only be obliged to comply (and ensure that each of its Associates in carrying out the Project Activities, complies) with that Contamination Notice if:

- (vi) the Contamination was caused, or contributed to, by any act or omission of a PPP Co or its Associates; or

- (vii) where the Contamination was not caused, or contributed to, by an act or omission of a PPP Co or its Associates, the Contamination is disturbed or interfered with by a PPP Co or its Associates.

(d) **(Contamination Notice relating to Temporary Areas and other areas - D&C Phase):** Subject to clause 8.6(f), each PPP Co must comply (and ensure that each of its Associates in carrying out the Project Activities, complies) with any Contamination Notice received during the D&C Phase relating to Contamination on, in, under, over or that emanated or is emanating from:

- (i) the Temporary Areas; or
- (ii) the land referred to in paragraph (c) of the definition of Construction Site,

regardless of whether the Contamination Notice is addressed to the State, a PPP Co, or some other person, if:

- (iii) the Contamination was caused, or contributed to, by an act or omission of a PPP Co or its Associates; or
- (iv) where the Contamination was not caused, or contributed to, by an act or omission of a PPP Co or its Associates, the Contamination:
  - A. is disturbed or interfered with by a PPP Co or its Associates; or
  - B. comes to the attention of an Authority by reason of a PPP Co or its Associates carrying out the Project Activities except to the extent that the Contamination emanated from part of the land referred to in clause 8.6(d)(ii) where:
    - 1) the PPP Co or its Associates do not exercise primary control or are not apparently in charge of at any time during the D&C Phase; and
    - 2) such land is not used principally in connection with the D&C Activities.

(e) **(Contamination Notice relating to Licensed Maintenance Areas and other areas - O&M Phase):** Subject to clause 8.6(f), each PPP Co must comply (and ensure that each of its Associates in carrying out the Project Activities, complies) with any Contamination Notice received during the O&M Phase relating to Contamination on, in, under, over or that emanated or is emanating from:

- (i) the Licensed Maintenance Areas; or
- (ii) the land referred to in paragraph (c) of the definition of Maintenance Site,

regardless of whether the Contamination Notice is addressed to the State, a PPP Co or some other person, if:

- (iii) the Contamination was caused or contributed to, by an act or omission of a PPP Co or its Associates; or
- (iv) where the Contamination was not caused, or contributed to, by an act or omission of a PPP Co or its Associates, the Contamination:

- A. is disturbed or interfered with by a PPP Co or its Associates;  
or
  - B. comes to the attention of an Authority by reason of a PPP Co or its Associates carrying out the Project Activities except to the extent that the Contamination emanated from part of the land referred to in clause 8.6(e)(ii) where:
    - 1) the PPP Co or its Associates do not exercise primary control or are not apparently in charge of at any time during the O&M Phase; and
    - 2) such land is not used principally in connection with the O&M Activities.
- (f) **(Contamination caused by Proximate Work):** A PPP Co is not liable under clauses 8.6(c), 8.6(d) or 8.6(e) in respect of Contamination that:
- (i) is caused or to the extent contributed to, by the carrying out of any Proximate Work; or
  - (ii) is disturbed or interfered with in the course of carrying out any Proximate Work.
- (g) **(Parties not to cause service of Contamination Notice):** Subject to their respective obligations at Law, no party will do anything with the intent, directly or indirectly, of causing or being likely to cause the service of a Contamination Notice.
- (h) **(Purported Contamination Notice issued to a PPP Co):** If a PPP Co believes in good faith, based on professional advice, that a Contamination Notice referred to in clauses 8.6(c), 8.6(d) or 8.6(e) can be challenged on the basis that it has not been properly issued, then the relevant PPP Co must:
- (i) promptly notify the State, and give the State a copy of all information and advice it has received in support of its view;
  - (ii) promptly commence and diligently pursue appropriate action to challenge or amend the Contamination Notice in accordance with the Law;
  - (iii) keep the State promptly and fully informed at all times of progress of that action; and
  - (iv) notwithstanding that challenge, promptly commence and diligently pursue all reasonable steps to contain the Contamination from causing any further immediate Environmental Hazard and continue to comply with the Contamination Notice until the Contamination Notice is stayed, quashed, overturned, set aside or revoked.

The relevant PPP Co shall be under no further obligations under clauses 8.6(c), 8.6(d) or 8.6(e) in respect of that part of the Contamination Notice which is stayed, quashed, overturned, set aside or revoked.

## 8.7 Native Title Claim

- (a) **(No representation or warranty):** Each PPP Co acknowledges and agrees that neither the State nor any other person has made any representation, given any

advice or given any warranty as to the existence or otherwise of any native or aboriginal title in respect of the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas.

- (b) **(The State responsible):** As between the State and each PPP Co:
- (i) the State will deal with any Native Title Claim in respect of any part of the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas; and
  - (ii) the State will pay any compensation or other moneys to be paid to the native title holders of any part of the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas pursuant to a successful Native Title Claim by those native title holders.
- (c) **(Each PPP Co must continue to perform):** If there is a Native Title Claim with respect to the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas (or any part of them), each PPP Co must:
- (i) continue to perform, and ensure that the State Works Contractor and the NB Works Contractor continue to perform, the Project Activities except to the extent otherwise:
    - A. directed by the State;
    - B. ordered by a court or tribunal; or
    - C. required by Law; and
  - (ii) at the request of the State and at the State's cost, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving the State and any other persons authorised by the State access to the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas (or any part of them) which is the subject of the Native Title Claim when reasonably required by the State for that purpose).

For the purposes of clause 8.7(c)(i)A, the State may direct a PPP Co to suspend, and cause the State Works Contractor and the NB Works Contractor to suspend, any or all of the Project Activities until such time as the State gives that PPP Co further notice.

- (d) **(Compensation during D&C Phase):** If a PPP Co, the State Works Contractor, the NB Works Contractor or the D&C Contractor is directed, ordered or required to cease to perform all or part of the D&C Activities (or to change the way it does so) as referred to in clause 8.7(c) then:
- (i) subject to clause 8.7(e), the State will pay the PPP Cos the reasonable costs and expenses incurred by:
    - A. the D&C Contractor (excluding any amounts payable by the D&C Contractor to a PPP Co, a Related Body Corporate or Related Trust Entity of a PPP Co or a Related Body Corporate of the D&C Contractor, to the extent that the PPP Co or the Related Body Corporate or Related Trust Entity is not engaged on arm's length commercial terms);

- B. the PPP Cos (without double counting and excluding any amounts payable by the PPP Cos to the D&C Contractor, a Related Body Corporate or Related Trust Entity of a PPP Co or a Related Body Corporate of the D&C Contractor);
- C. the State Works Contractor (without double counting and excluding any amounts payable by the State Works Contractor to the D&C Contractor, a Related Body Corporate or Related Trust Entity of the State Works Contractor or a Related Body Corporate of the D&C Contractor); and
- D. the NB Works Contractor (without double counting and excluding any amounts payable by the NB Works Contractor to the D&C Contractor, a Related Body Corporate or Related Trust Entity of the NB Works Contractor or a Related Body Corporate of the D&C Contractor),

as a direct result of such direction, order or requirement (including delay costs arising directly to the extent that such direction, order or requirement prevents or will prevent the PPP Cos from achieving Tollroad Completion by the Date for Tollroad Completion); and

(ii) each PPP Co must:

- A. take all reasonable steps to mitigate such costs and expenses;
- B. comply with all reasonable directions of the State concerning the Native Title Claim and its consequences; and
- C. ensure that the State Works Contractor, the NB Works Contractor and the D&C Contractor comply with the requirements of this clause 8.7(d)(ii).

For the purposes of clause 8.7(d)(i), reasonable costs and expenses includes any reasonable interest, fees and other amounts payable under the Debt Financing Documents during the period of the delay.

- (e) **(Exception):** Clause 8.7(d)(i) does not apply in respect of costs or expenses incurred by a PPP Co, the State Works Contractor, the NB Works Contractor or the D&C Contractor to the extent that such costs or expenses result from a failure by a PPP Co to comply with its obligations under clause 8.7(d)(ii).
- (f) **(Possible MAE Event):** If a PPP Co or the O&M Contractor is directed, ordered or required to cease to perform the O&M Activities (or to change the way it does so) as referred to in clause 8.7(c) other than by way of a Final Court Decision, then clause 26.1 will apply.
- (g) **(Termination):** If the PPP Cos, the State Works Contractor or the NB Works Contractor is prevented from carrying out the Project Activities for a period exceeding 6 months as a result of a direction, order or requirement as referred to in clause 8.7(c) then the State may in its absolute discretion terminate this deed by giving a notice to that effect to the PPP Cos after which this deed will be so terminated and clause 41.7(b) will apply.

## 8.8 Artefacts

- (a) **(Discovery):** All Artefacts discovered on or under the surface of the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas will, as between the State and each PPP Co, be the absolute property of the State.
- (b) **(PPP Cos' obligations):** Each PPP Co must:
  - (i) at all times permit and allow, and ensure that its Associates permit and allow, the State to watch or examine any excavations on the Project Areas;
  - (ii) take, and ensure that its Associates take, every reasonable precaution in carrying out the Project Activities to prevent Artefacts being damaged or removed; and
  - (iii) upon the discovery of any Artefact:
    - A. immediately notify the State of the discovery of the Artefact; and
    - B. comply, and ensure the State Works Contractor and the NB Works Contractor comply, with any directions or orders imposed by any relevant Authority upon a PPP Co, the State Works Contractor, the NB Works Contractor or the State in respect of the Artefact.
- (c) **(Cultural Heritage Management Plan):** Arrangements regarding the management of any known Aboriginal Cultural Heritage or Aboriginal Cultural Heritage discovered during the Project Activities are set out in the Cultural Heritage Management Plan (and, if applicable, the EWAG Cultural Heritage Agreement).
- (d) **(PPP Cos' obligations):** The PPP Cos agree to:
  - (i) take an assignment of all the rights and obligations set out in the Cultural Heritage Management Plan as and when directed by the State and to comply with and observe all of its obligations under the Cultural Heritage Management Plan; and
  - (ii) if applicable, ensure the NB Works Contractor takes an assignment of all the rights and obligations set out in the EWAG Cultural Heritage Agreement as and when directed by the State and complies with and observes all of its obligations under the EWAG Cultural Heritage Agreement.
- (e) **(Offence):** The PPP Cos acknowledge that they and their Associates have a duty to protect Aboriginal Cultural Heritage under the terms of the *Aboriginal Cultural Heritage Act 2003 (Qld)*, and that it is an offence to harm Aboriginal Cultural Heritage other than in accordance with the provisions of the *Aboriginal Cultural Heritage Act 2003 (Qld)* and/or the Cultural Heritage Management Plan. Without limiting clause 9.1, each PPP Co must comply with, and ensure that its Associates in carrying out the Project Activities comply with, all requirements of the *Aboriginal Cultural Heritage Act 2003 (Qld)* at all times.
- (f) **(A PPP Co to bear loss):** In the event that a PPP Co or its Associates fail to observe the requirements of the *Aboriginal Cultural Heritage Act 2003 (Qld)*, the Cultural Heritage Management Plan or, if applicable, the EWAG Cultural Heritage

Agreement, and as a result of such failure a PPP Co or its Associates are injuncted from carrying out the Project Activities and/or suffer any financial penalty, that PPP Co will bear such costs and any consequential costs associated with delay to the Projects.

(g) **(The State to bear all other costs):**

(i) Subject to clauses 8.8(f) and 8.8(h), the State will bear all other costs of the PPP Cos, the State Works Contractor and the NB Works Contractor associated with the protection of Aboriginal Cultural Heritage under the *Aboriginal Cultural Heritage Act 2003 (Qld)* and implementation of the Cultural Heritage Management Plan and, if applicable, the EWAG Cultural Heritage Clearance Arrangements, including:

A. any payments to be made to any Aboriginal parties under the Cultural Heritage Management Plan and, if applicable, the EWAG Cultural Heritage Clearance Arrangements; and

B. the reasonable costs and expenses incurred by:

- 1) the D&C Contractor (excluding any amounts payable by the D&C Contractor to a PPP Co, a Related Body Corporate or Related Trust Entity of a PPP Co or a Related Body Corporate of the D&C Contractor, to the extent that the PPP Co or the Related Body Corporate or Related Trust Entity is not engaged on arm's length commercial terms);
- 2) the PPP Cos (without double counting and excluding any amounts payable by the PPP Cos to the D&C Contractor, a Related Body Corporate or a Related Trust Entity of a PPP Co or a Related Body Corporate of the D&C Contractor);
- 3) the State Works Contractor (without double counting and excluding any amounts payable by the State Works Contractor to the D&C Contractor, a Related Body Corporate or a Related Trust Entity of the State Works Contractor or a Related Body Corporate of the D&C Contractor); and
- 4) the NB Works Contractor (without double counting and excluding any amounts payable by the NB Works Contractor to the D&C Contractor, a Related Body Corporate or Related Trust Entity of the NB Works Contractor or a Related Body Corporate of the D&C Contractor),

as a direct result of a direction of the State under clause 8.8(g)(ii)B (including delay costs arising directly to the extent that such direction, order or requirement prevents or will prevent the PPP Cos from achieving Tollroad Completion by the Date for Tollroad Completion).

(ii) Each PPP Co must:

- A. take all reasonable steps to mitigate any of the costs referred to in clause 8.8(g)(i);
- B. comply with all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage under the *Aboriginal Cultural Heritage Act 2003 (Qld)* and implementation of the Cultural Heritage Management Plan (and, if applicable, the EWAG Cultural Heritage Clearance Arrangements); and
- C. ensure that the State Works Contractor, the NB Works Contractor and the D&C Contractor comply with the requirements of this clause.

For the purposes of clause 8.8(g)(i), costs includes any reasonable interest, fees and other amounts payable under the Debt Financing Documents during any period of delay.

- (h) **(Exception):** Clause 8.8(g)(i) does not apply in respect of any costs and expenses incurred by a PPP Co, the State Works Contractor, the NB Works Contractor or the D&C Contractor to the extent that such costs result from a failure by a PPP Co to comply with its obligations under clause 8.8(g)(ii).

## 8.9 Utility owners

Each PPP Co must consult with utility owners and any other persons having an interest (such as a licence, or the benefit of an easement) in land included in the Construction Site, and must minimize any disruption to, costs incurred by, and revenue foregone by, all such persons as a result of the undertaking of the Project Works. Any such consultation must be undertaken in accordance with the requirements of Annexures 5 and 6 to the Performance Specification.

## 8.10 Licensed Maintenance Areas

- (a) The State grants to TQ Trustee a non-exclusive right to access and use the Licensed Maintenance Areas ("**Access and Use Rights**"), for the O&M Phase, for the purposes of, and otherwise in accordance with, the terms and conditions set out in clauses 8.10 to 8.13.
- (b) The State authorises TQ Trustee to access and use the Licensed Maintenance Areas only for the purposes of enabling TQ Trustee to carry out its obligations under and in accordance with this deed in connection with the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works ("**Permitted Use**") and for no other purpose unless the State otherwise agrees in writing.
- (c) Subject to this deed, the Lease and the Site Access Schedule, the State authorises TQ Trustee, its Associates and TQ Trustee's permitted sublessees and assignees under the Lease, together with all necessary vehicles, equipment and materials, to enter upon, remain upon, and use the Licensed Maintenance Areas for the Permitted Use.
- (d) The Access and Use Rights are not exclusive to TQ Trustee.
- (e) TQ Trustee acknowledges and agrees that the Access and Use Rights will, at all times, be subject to those rights of access to any part of the Licensed Maintenance Areas which any Authority (including the State in its capacity as an Authority) may wish to exercise in the lawful exercise of their statutory functions.

- (f) The State will be entitled to grant Easements which benefit or burden the Licensed Maintenance Areas pursuant to the terms of the Agreement to Lease and the Lease.

### **8.11 Licence not coupled with grant or interest**

TQ Trustee acknowledges and agrees that the Access and Use Rights do not create or confer upon TQ Trustee any estate or proprietary interest in the Licensed Maintenance Areas whether at law or in equity and that those rights are merely personal rights between the State and TQ Trustee in relation to the Licensed Maintenance Areas.

### **8.12 Revocation**

The Access and Use Rights will automatically be determined on termination of this deed whereupon TQ Trustee must desist immediately from entering on to and/or using the Licensed Maintenance Areas.

### **8.13 TQ Trustee's obligations**

- (a) TQ Trustee's use and access of the Licensed Maintenance Areas is subject to the provisions and obligations under the Perpetual Lease and at all times TQ Trustee and its Associates must not do anything which:
  - (i) could affect or bring to an end the State's estate or interest in the Licensed Maintenance Areas; or
  - (ii) cause a breach of any obligation contained in the Perpetual Lease.
- (b) TQ Trustee must at all times comply with all licensee's or lessee's (whichever is applicable) obligations and covenants contained in the Perpetual Lease.
- (c) TQ Trustee must while using the Licensed Maintenance Areas comply with and observe all of its obligations as lessee under the Lease as if the Licensed Maintenance Areas were part of the Leased Area including repair and make good any damage which may be caused to the Licensed Maintenance Areas by TQ Trustee or its Associates.

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## **9. Laws and Approvals**

### **9.1 Compliance with laws**

Each PPP Co must:

- (a) in carrying out the Project Activities, comply with;
- (b) ensure that its Associates, in carrying out the Project Activities, comply with; and
- (c) ensure that the Project Works and the Tollroad comply with,

all applicable Laws, including any change in a Law after the date of this deed.

### **9.2 Approvals**

Each PPP Co must:

- (a) **(Obtain Approvals):** obtain and maintain, and ensure that its Associates, in carrying out the Project Activities, obtain and maintain, all Approvals other than the following Approvals which the State will obtain:

- (i) the Coordinator-General's Report;
  - (ii) the First Change Report; and
  - (iii) the Key State EWAG Approvals;
- (b) **(Comply with Approvals):** comply with, and ensure that:
- (i) its Associates, in carrying out the Project Activities;
  - (ii) the Project Works; and
  - (iii) the Tollroad,
- comply with, all requirements of all relevant Approvals (including those which the State is expressed under the terms of the Approval to be required to comply with), except the following requirements, which the State will comply with:
- (iv) those conditions of the Planning Approval listed in Schedule 4; and
  - (v) those conditions of the EWAG State Planning Approval contained in Schedule 2 (Conditions of EWAG State Planning Approval to be complied with by the State) of the EWAG Works Deed;
- (c) **(Pay all fees etc):** pay all fees, effect all insurances, provide any bonds and execute any undertaking or agreements required by any relevant Authority in respect of any Approval which that PPP Co must obtain or maintain (and ensure that its Associates do likewise in relation to any Approvals which they must obtain or maintain in connection with the Project Activities);
- (d) **(Notices):** give the State copies of:
- (i) all documents including notices it gives to Authorities at the time it submits such documents including notices; and
  - (ii) all documents (including Approvals and other notices) that Authorities issue to it within 5 Business Days of receiving such documents;
- (e) **(Indemnity):** except to the extent prohibited by law, indemnify the State against any Claim or Loss brought against, suffered or incurred by the State arising out of or in any way in connection with a failure by a PPP Co to comply with its obligations under clauses 9.2(a) and 9.2(b);
- (f) **(Condition precedent to Tollroad Completion):** as a condition precedent to Tollroad Completion, ensure that it has:
- (i) obtained all Approvals (other than in respect of the Tolling System) it is required to obtain under this deed with respect to the Tollroad (other than in respect of the Tolling System); and
  - (ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals (including the Planning Approval) with respect to the design, construction and commissioning of the AL Works (other than in respect of the Tolling System) it is required to comply with, carry out and fulfil under this deed;
- (g) **(Condition Precedent to NB Practical Completion):** as a condition precedent to NB Practical Completion, ensure that it and the NB Works Contractor have:

- (i) obtained all Approvals it and the NB Works Contractor are required to obtain under this deed and the NB Works Deed with respect to the Northern Busway (Windsor to Kedron); and
  - (ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals with respect to the design, construction and commissioning of the NB Works it and the NB Works Contractor are required to comply with, carry out and fulfil under this deed and the NB Works Deed; and
- (h) **(Condition Precedent to EWAG Practical Completion):** as a condition precedent to EWAG Practical Completion, ensure that it and the NB Works Contractor have:
- (i) obtained all Approvals it and the NB Works Contractor are required to obtain under this deed and the EWAG Works Deed with respect to EWAG; and
  - (ii) complied with, carried out and fulfilled all conditions and requirements of all Approvals with respect to the design, construction and commissioning of the EWAG Works it and the NB Works Contractor are required to comply with, carry out and fulfil under this deed or the EWAG Works Deed.

### 9.3 Planning Approval

- (a) Notwithstanding any review of any aspect of the design or construction of the AL Works by the State or any other Authority, the PPP Cos warrant that the Performance Specification complies with the Planning Approval.
- (b) Notwithstanding any review of any aspect of the design or construction of the NB Works by the State or any other Authority, the PPP Cos warrant that the Performance Specification complies with the Planning Approval:
  - (i) as if the Planning Approval applies to the NB Project in addition to the AL Project, except to the extent that those conditions of the Planning Approval listed in Schedule 2 (Conditions of Planning Approval that do not apply to the NB Project) of the NB Works Deed (which, for the avoidance of doubt, apply to the AL Project) are specified not to apply to the NB Project; and
  - (ii) as if any reference in the Planning Approval to the "Project" or "Airport Link" or the "EIS" also applies to the NB Project.

### 9.4 Modifications to Planning Approval

- (a) **(PPP Co initiated modifications to Planning Approval):** If:
  - (i) the Coordinator-General or the State determines that it is necessary to carry out any further environmental impact assessment or to apply for a modification of the Planning Approval; and
  - (ii) the Coordinator-General's or the State's determination relates to or arises out of or in connection with any Modifications requested by a PPP Co,

then any such assessment and applications, and any determinations in respect of any such assessment and applications, will be at that PPP Co's cost and risk, irrespective

of who is required to, or does, carry out any such assessment or make any such applications.

- (b) **(Other Changes to Planning Approval):** Without limitation to clause 9.4(c), if after Financial Close, there is a Change to Planning Approval, clause 22.1 will apply:
  - (i) as if the State had issued a "Modification Proposal" under clause 22.1 to address the effect of the Change to Planning Approval; and
  - (ii) on the basis that the State is obliged to proceed with the Modification under that "Modification Proposal" and may not withdraw the proposed Modification.
- (c) **(Mitigation):** Each PPP Co must:
  - (i) take all reasonable steps to mitigate the costs and expenses of the Modification;
  - (ii) for this purpose, comply with all reasonable directions of the State concerning the Modification or change and its consequences; and
  - (iii) ensure that the D&C Contractor and the O&M Contractor (as applicable) comply with the requirements of this clause 9.4(c),

and the State's liability under clause 9.4(b) will be reduced to the extent a PPP Co fails to comply with these obligations.

## 9.5 Legal challenge to Planning Approval

- (a) **(Each PPP Co must continue to perform):** If there is a legal challenge brought about by way of commencement of court proceedings in relation to the Planning Approval, each PPP Co must continue to carry out, and ensure that the State Works Contractor and the NB Works Contractor continue to carry out, the Project Activities unless, as a result of that legal challenge, that PPP Co, the State Works Contractor, the NB Works Contractor, the State or the D&C Contractor is otherwise ordered by a court.
- (b) **(State responsible for dealing with challenge):** As between the State and each PPP Co, the State is responsible for dealing with the legal challenge as it sees fit in its absolute discretion, including conducting such legal challenge in the name of a PPP Co.
- (c) **(Compensation):** If a PPP Co, the State Works Contractor, the NB Works Contractor, the State or the D&C Contractor is ordered by a court to stop carrying out part or all of the D&C Activities (or to change the way the D&C Activities are carried out) as referred to in clause 9.5(a) then:
  - (i) subject to clause 9.5(d), the State will pay the PPP Cos the reasonable costs and expenses incurred by:
    - A. the D&C Contractor (excluding any amounts payable by the D&C Contractor to a PPP Co, a Related Body Corporate of a PPP Co or Related Trust Entity of a PPP Co or a Related Body Corporate of the D&C Contractor, to the extent that the PPP Co or the Related Body Corporate or Related Trust

Entity is not engaged on an arm's length basis or on commercial terms);

- B. a PPP Co (without double counting and excluding any amounts payable by a PPP Co to the D&C Contractor, a Related Body Corporate of a PPP Co or a Related Body Corporate of the D&C Contractor);
- C. the State Works Contractor (without double counting and excluding any amounts payable by the State Works Contractor to the D&C Contractor, a Related Body Corporate of the State Works Contractor or a Related Body Corporate of the D&C Contractor); and
- D. the NB Works Contractor (without double counting and excluding any amounts payable by the NB Works Contractor to the D&C Contractor, a Related Body Corporate or Related Trust Entity of the NB Works Contractor or a Related Body Corporate of the D&C Contractor),

arising directly as a result of the order (including delay costs arising directly to the extent that such court order prevents or will prevent the PPP Cos from achieving Tollroad Completion by the Date for Tollroad Completion); and

- (ii) Each PPP Co must:
  - A. take all reasonable steps to mitigate such costs and expenses;
  - B. comply with all reasonable directions of the State concerning the legal challenge and its consequences; and
  - C. ensure that the State Works Contractor, the NB Works Contractor and the D&C Contractor comply with the requirements of this clause 9.5(c)(ii).

For the purposes of clause 9.5(c)(i), reasonable costs and expenses includes any reasonable interest, fees and other amounts payable under the Debt Financing Documents during the period of the delay.

- (d) **(Exception):** Clause 9.5(c)(i) does not apply:
  - (i) in respect of any costs or expenses incurred by a PPP Co, the State Works Contractor, the NB Works Contractor or the D&C Contractor to the extent such costs or expenses result from a failure by a PPP Co to comply with its obligations under clause 9.5(c)(ii); or
  - (ii) to the extent that the legal challenge
    - A. is initiated or upheld, or the court order is made, due to a PPP Co's failure to comply with its obligations under a State Project Document or some other wrongful act or omission of a PPP Co or its Associates; or
    - B. relates to or arises out of or in connection with any Modification requested by a PPP Co.

- (e) **(Possible MAE Event):** If a PPP Co or the O&M Contractor is ordered by a court to stop carrying out the O&M Activities (or to change the way it does so) as referred to in clause 9.5(a) other than by way of a Final Court Decision then clause 26.1 will apply, except where the legal challenge:
  - (i) is initiated or upheld, or the court order is made, due to a PPP Co's failure to comply with its obligations under a State Project Document or some other wrongful act or omission of a PPP Co or its Associates; or
  - (ii) relates to or arises out of or in connection with any Modification requested by a PPP Co.

## 9.6 Changes in Air Filtration Law

- (a) **(D&C Phase):** Subject to clause 9.6(c), if there is a Change in Air Filtration Law that either occurs:
  - (i) before the Tollroad Opening Date and affects the AL Project; or
  - (ii) before the Date of NB Practical Completion and affects the NB Project, clause 22.1 will apply:
  - (iii) as if the State had issued a "Modification Proposal" under clause 22.1 to address the effect of the Change in Air Filtration Law; and
  - (iv) on the basis that the State is obliged to proceed with the Modification under that "Modification Proposal" and may not withdraw the proposed Modification.
- (b) **(O&M Phase):** If a Change in Air Filtration Law that affects the AL Project occurs on or after the Tollroad Opening Date, clause 26 will apply.
- (c) **(Mitigation):** Each PPP Co must:
  - (i) take all reasonable steps to mitigate the costs and expenses of the Modification;
  - (ii) for this purpose, comply with all reasonable directions of the State concerning the Modification or change and its consequences; and
  - (iii) ensure that the D&C Contractor and the O&M Contractor (as applicable) comply with the requirements of this clause 9.6(c),

and the State's liability under clause 9.6(a) or 9.6(b) will be reduced to the extent that each PPP Co fails to comply with these obligations.

## 9.7 No changes in Perpetual Lease

The State undertakes that it will not seek to amend, forfeit, terminate or surrender the Perpetual Lease without the consent of a PPP Co.

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## 10. Project Plans

### 10.1 Purpose

Each PPP Co acknowledges and agrees that the intended purposes of the Project Plans include:

- (a) to demonstrate to the State that each PPP Co has the understanding, capacity and capability at all times to carry out the Project Activities in accordance with the requirements of the State Project Documents;
- (b) to ensure that the Project Works and the Tollroad comply with the requirements of the State Project Documents; and
- (c) to allow the State to understand how each PPP Co will achieve the performance outcomes specified in this deed and otherwise fulfil its obligations under the State Project Documents.

## 10.2 Fitness for purpose

Each PPP Co warrants that each Project Plan will at all times be fit for its intended purposes as specified in, or ascertainable from, the State Project Documents and will in any event be prepared, developed and updated using D&C Best Practices and O&M Best Practices (as applicable).

## 10.3 Project Plans

Each PPP Co must provide to the State and the Independent Verifier the Project Plans in accordance with the Performance Specification, including Annexure 9 to the Performance Specification.

## 10.4 Updated Project Plans

- (a) **(Obligation to update):** Subject to clause 10.4(b), each PPP Co must:
  - (i) develop, continually review and, if necessary, update the Project Plans:
    - A. to take into account events or circumstances which will, or may reasonably be expected to, affect the manner in which that PPP Co carries out the Project Activities including:
      - 1) Modifications;
      - 2) changes in Law;
      - 3) Approvals (including the conditions of Approvals);
      - 4) the commencement of new phases or stages of design or construction as shown in the D&C Program;
      - 5) any breach or potential breach of the warranty in clause 10.2; and
      - 6) those events or circumstances identified in the Performance Specification for each Project Plan, including as particularly set out in Annexure 9 to the Performance Specification; and
    - B. as otherwise specified in the Performance Specification, including Annexure 9 to the Performance Specification,

provided that, after the Date of NB Final Completion or Date of EWAG Final Completion (as appropriate), that PPP Co will not, except as required by clauses 10.4(a)(ii) or 10.4(a)(iii), be required to develop,

review or update any Project Plan to the extent that the Project Plan relates to the Busway or EWAG;

- (ii) develop, continually review and, if necessary, update the Project Plans up to the expiry of the last EWAG Defects Liability Period to expire to take into account any correction of a Defect which will, or may reasonably be expected to, affect the manner in which the State carries out the operation and maintenance of EWAG;
  - (iii) develop, review and, if necessary, update the Project Plans up to the expiry of the last NB Defects Liability Period to expire to take into account any correction of a Defect which will, or may reasonably be expected to, affect the manner in which the State carries out the operation and maintenance of the Busway; and
  - (iv) promptly submit each updated Project Plan to the State and the Independent Verifier.
- (b) **(Minimum standard):** Each PPP Co acknowledges that any Initial Project Plan referred to in this deed sets out the minimum requirements in respect of the relevant Project Plan and any future update of that Project Plan and no updated Project Plan can in any way limit or reduce the requirements or obligations of a PPP Co under the Initial Project Plan, except where it is necessary to do so to comply with the State Project Documents.

## 10.5 Review by the State

Subject to any requirements applicable to the submission and review of specific Project Plans under the Performance Specification (including Annexure 9 to the Performance Specification), each of the State and Independent Verifier may:

- (a) review any Project Plan submitted under this clause 10; and
- (b) if the Project Plan does not comply with the requirements of the State Project Documents, notify the PPP Cos of that non-compliance within 15 Business Days of the submission of the Project Plan.

If a PPP Co receives a notice under clause 10.5(b) or any provision of the Performance Specification requiring that PPP Co to submit an amended Project Plan, the relevant PPP Co must promptly submit an amended Project Plan to the State and the Independent Verifier.

## 10.6 The State may request update

If:

- (a) any Project Plan does not comply with the requirements of the State Project Documents; or
- (b) a PPP Co has not updated any Project Plan in accordance with the requirements of clause 10.4(a)(i),

the State may by written notice request that the relevant PPP Co update the Project Plan specifying:

- (c) the reasons why such updating is required (or why the Project Plan does not comply with the State Project Documents); and

- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the relevant PPP Co must:

- (e) amend or update the Project Plan as requested by the State; and
- (f) submit the amended or updated Project Plan to the State and the Independent Verifier within the time specified under clause 10.6(d).

## **10.7 No obligation to review**

Neither the State nor the Independent Verifier owes any duty of care to either PPP Co to review any Project Plan submitted by a PPP Co for errors, omissions or compliance with the State Project Documents.

No review of, comments upon, or notice in respect of, or any failure to review, comment upon or give notice in respect of, any Project Plan submitted by a PPP Co or any other direction, act or omission of the State (including a request under clause 10.6 in respect of any Project Plan) or the Independent Verifier will in any way:

- (a) relieve a PPP Co from, or alter or affect, its liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law; or
- (b) prejudice the State's rights against a PPP Co whether under the State Project Documents or otherwise according to Law.

## **10.8 Compliance with Project Plans**

Each PPP Co must comply with each Project Plan which has been submitted to the State and the Independent Verifier and in respect of which the State or the Independent Verifier has not given notice under clause 10.5(b) (or any provision of the Performance Specification requiring a PPP Co to submit an amended Project Plan), unless it is necessary to depart from a Project Plan to ensure compliance with the State Project Documents.

## **10.9 Restrictions on carrying out the Project Activities**

Each PPP Co must comply with the restrictions upon the carrying out of the Project Activities specified in the Performance Specification (including Annexure 9 to the Performance Specification).

## **10.10 No relief**

A PPP Co will not be relieved from compliance with any of its obligations under any State Project Documents or from any of its liabilities under any State Project Documents or otherwise according to Law as a result of:

- (a) compliance by a PPP Co with its obligations under this clause 10, including compliance with any Project Plan; or
- (b) any failure by the State, or anyone else acting on the State's behalf, to detect any non-compliance including where any failure arises from any negligence on the part of the State or any other person.

Compliance by a PPP Co with its obligations under this clause 10 (including clause 10.8) is not evidence of compliance by a PPP Co with its other obligations under the State Project Documents.

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## **11. General obligations applying to the Project Activities**

### **11.1 All work included**

Subject to clauses 22 and 26, each PPP Co has allowed for, and has ensured that the State Works Contractor and the NB Works Contractor have allowed for, the provision of all work and materials necessary for the Project Activities, whether or not the work or materials are expressly mentioned in this deed, the EWAG Works Deed, the State Works Deed or the NB Works Deed. All such work and materials:

- (a) must be undertaken and provided by that PPP Co, the State Works Contractor and the NB Works Contractor at its own cost (subject to the State's payment obligations under the State Works Deed, the EWAG Works Deed and the NB Works Deed);
- (b) form part of the Project Activities and will not constitute a Modification; and
- (c) will not entitle that PPP Co to make a Claim except as provided for in this deed, the EWAG Works Deed, the State Works Deed or the NB Works Deed.

### **11.2 Workplace Health, Safety & Rehabilitation**

- (a) Each PPP Co must ensure that in carrying out the Project Activities:
  - (i) it complies with all Laws, including the WHS Legislation, and other requirements of this deed, the EWAG Works Deed and the NB Works Deed for work health, safety and rehabilitation management; and
  - (ii) it procures, to the extent reasonably practicable:
    - A. any Principal Contractor, contractor, or subcontractor engaged by it;
    - B. TQ Operations; and
    - C. TQ Operations to procure any contractor or subcontractor engaged by it,to discharge its duties under the WHS Legislation; and
  - (iii) it does all things reasonably practicable to allow other parties to discharge their obligations under the WHS Legislation; and
  - (iv) its Associates comply with the WHS Legislation and the requirements referred to in this clause 11.2; and
  - (v) it reports any “notifiable incident” (as defined in the WHS Legislation) to the relevant Authority as required under the WHS Legislation; and
  - (vi) it notifies the State immediately (and in any event within 12 hours of such matter arising) of any "notifiable incident" (as defined in the WHS Legislation) arising out of, or in any way in connection with, the Project Activities and provides any such information in relation to any incident to allow the State to comply with its duties and obligations, if any, under the WHS Legislation.
- (b) Upon commencement of this deed in accordance with clause 2:

- (i) where the D&C Activities or the O&M Activities amount to "a construction project" as defined in the WHS Legislation, TQ Operations is the "person conducting a business or undertaking that commissions a construction project" for the purposes of the WHS Legislation for all works carried out and activities undertaken on the Construction Site and the Maintenance Site during the performance of the respective Activities;
- (ii) for the avoidance of doubt, and to the extent necessary to carry out its obligations and functions under this deed, the State confirms that TQ Operations has the management and control of the respective worksites;
- (iii) where the D&C Activities amount to a "construction project" as defined in the WHS Legislation, TQ Operations will appoint Thiess Pty Ltd ABN 87 010 221 486 (or another person if TQ Operations so requests and the State, in its absolute discretion, consents) to be the Principal Contractor in respect of the D&C Activities and to:
  - A. have management and control of the workplace at which the D&C Activities are being undertaken; and
  - B. discharge the duties of the Principal Contractor under the WHS Legislation; and
- (iv) where the O&M Activities being conducted by the O&M Contractor amount to a "construction project" as defined in the WHS Legislation, TQ Operations will appoint Ventia Pty Limited ABN 51 603 146 676 (or another person if TQ Operations so requests and the State, in its absolute discretion, consents) to be the Principal Contractor in respect of the O&M Activities and to:
  - A. have management and control of the workplace at which the O&M Activities are being undertaken including the Maintenance Site; and
  - B. discharge the duties of the Principal Contractor under the WHS Legislation.
- (c) In the event that any of the Project Activities cannot properly be construed as a "construction project" as defined in the WHS Legislation, for any particular period of time, TQ Operations is responsible for the safe delivery of the Project Activities including in the capacity of a person in control of the workplace.
- (d) To the extent that the parties have a duty in relation to the same matter under the WHS Legislation, the parties will so far as reasonably practicable, consult, cooperate and coordinate activities with each other and any other person who has a duty in relation to the same matter under the WHS Legislation and as described and required in the WHS Legislation.
- (e) The parties must ensure their actions and activities do not hinder or prevent another party from carrying out duties to ensure, so far as reasonably practicable, the health and safety of persons is not put at risk from work carried out as part of the performance of this deed, including those duties and obligations under WHS Legislation, and each parties' policies and procedures.
- (f) TQ Operations must pay all fees, levies, charges and contributions under the WHS Legislation (whether payable by the State or by TQ Operations) in respect of the

Project Works on behalf of the State, TQ Operations, the State Works Contractor and the NB Works Contractor.

### 11.3 Interference, obstruction and nuisance

In carrying out the Project Activities, each PPP Co must:

- (a) avoid unnecessary:
  - (i) interference with the passage of people and vehicles; or
  - (ii) obstruction to any property;
- (b) prevent nuisance including any nuisance caused by unreasonable noise, dust, emission, vibration or disturbance; and
- (c) ensure that its Associates comply with the requirements of this clause 11.3.

### 11.4 Complaints

- (a) **(Each PPP Co to notify the State):** Each PPP Co must immediately notify the State in writing if any:
  - (i) complaint (other than a Customer Complaint which is to be dealt with in accordance with clause 19.15) is made or any proceedings are instituted or threatened;
  - (ii) letter of demand is issued; or
  - (iii) order or direction is made,  
  
by anyone (including any Authority (other than the State) or any landowner, lessee or licensee near the Licensed Construction Areas, any Extra Land, the Leased Area, the Licensed Maintenance Areas) against a PPP Co or its Associates in respect of any aspect of the carrying out of the Project Activities, including:
    - (iv) Contamination or an Environmental Hazard;
    - (v) a PPP Co's non-compliance with any Environmental Document (or condition or requirement thereunder) or the Design and Construction Environmental Management Plan or any Law relating to the Environment;
    - (vi) a PPP Co's use or occupation of the Licensed Construction Areas, any Extra Land, the Licensed Maintenance Areas or the Leased Area; or
    - (vii) loss or damage of the kind referred to in clause 28.4.
- (b) **(Each PPP to resolve etc):** Each PPP Co must:
  - (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 11.4(a);
  - (ii) take all reasonable measures to resolve those matters as soon as possible; and
  - (iii) keep a register of all complaints, proceedings, letters of demand, orders and directions referred to in clause 11.4(a), which:

- A. contains full details of:
  - 1) each complaint, proceedings, letter of demand, order and direction; and
  - 2) the action taken by a PPP Co with respect to each complaint, proceedings, letter of demand, order and direction;
- B. is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
- C. may be inspected by the State whenever the State reasonably requires.

## **11.5 Traffic management**

Each PPP Co is responsible for the control, direction and management of traffic that is affected by the Project Activities, and must ensure that the D&C Contractor and O&M Contractor (as applicable):

- (a) as the State agent, delegate or authorised representative (as the case may be) manage the Project Works and the Tollroad to ensure:
  - (i) the continuous, safe and efficient movement of traffic;
  - (ii) that the traffic carrying capacity of Affected Roads is maintained; and
  - (iii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
- (b) at all times comply with the Construction Traffic Management Plan and the Performance Specification in respect of traffic management; and
- (c) comply with the State's directions (in its capacity as an Authority) to that PPP Co with respect to the management of traffic.

## **11.6 Security**

TQ Operations must provide such security measures as are necessary for the protection and security of the Project Works and the Tollroad against theft, vandalism, unauthorised entry into the Licensed Construction Area, the Extra Land, the Leased Area or the Licensed Maintenance Areas and any other unlawful acts.

## **11.7 Industrial issues**

Each PPP Co must, in carrying out the Project Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Laws, for all employees engaged by any person, are always observed in full; and
- (c) keep the State fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Project Activities.

## **11.8 Community liaison**

Each PPP Co:

- (a) acknowledges that the areas where the Project Activities are to be carried out are of great importance to many people, including, the local residents and businesses; and
- (b) must manage and participate in all community relations programs and activities as:
  - (i) required by Annexure 6 of the Performance Specification;
  - (ii) contained in the Community and Consultation Management Plan; and
  - (iii) reasonably requested by the State from time to time.

## **11.9 Public Utility Plant**

Each PPP Co:

- (a) must obtain and pay for any PUP and all connections for all PUP it needs to perform its obligations under the State Project Documents;
- (b) must investigate, protect, relocate, modify and provide for all PUP necessary for it to comply with its obligations under the State Project Documents;
- (c) assumes the risk of the existence, location, condition and availability of PUP in respect of the Project Activities;
- (d) must contract for, acquire or otherwise procure or provide for the provision of, all fuel and other materials required for the performance of its obligations under the State Project Documents; and
- (e) must, to the extent not prohibited by law, indemnify the State against any Claim or Loss brought against, suffered or incurred by the State arising out of or in connection with:
  - (i) any disruption to any PUP; or
  - (ii) a failure by a PPP Co to comply with any obligation under the State Project Documents (including the Performance Specification) with respect to PUP or the PUP Works including the PPP Cos' obligations under Annexure 5 of the Performance Specification.

The State will not be liable under the State Project Documents or otherwise in relation to any PUP for the Projects.

## **11.10 Upstream Interface Agreements**

- (a) Each PPP Co must not, and must ensure that its Associates do not, in carrying out the Project Activities, cause the State to be in breach of any of the Upstream Interface Agreements.
- (b) Each PPP Co must indemnify the State from and against any Loss or Claim suffered, incurred or brought against the State arising out of or in connection with:
  - (i) physical damage to any Third Party Interface Infrastructure caused by the Project Activities; or

- (ii) any failure by a PPP Co to comply with clause 11.10(a).

### **11.11 Direct Interface Agreements**

- (a) Each PPP Co must, and must ensure that its Associates:
  - (i) comply with all of the obligations of the PPP Cos and their Associates under each Direct Interface Agreement; and
  - (ii) in carrying out the Project Activities, comply with any directions of the State in relation to compliance with the conditions and requirements of each Direct Interface Agreement.
- (b) Without limiting any other provision of this deed, the PPP Cos must indemnify the State from and against any loss or Claim suffered, incurred or brought against the State arising out of or in connection with:
  - (i) the works or activities described in the Direct Interface Agreement; or
  - (ii) any failure by a PPP Co to comply with its obligations under this clause 11.11.

### **11.12 Certification Schedule**

Each PPP Co must provide to the State, and where applicable the Independent Verifier, the certificates required by the Certification Schedule in accordance with the terms of the Certification Schedule.

### **11.13 Portable Long Service Leave Levy and Training Levy**

- (a) Without limiting its other obligations or liabilities under this deed or otherwise, each PPP Co must comply with its obligations under the Long Service Leave Legislation.
- (b) Each PPP Co must pay all fees, levies, charges and contributions under the Long Service Leave Legislation in respect of the PPP Co AL Works.

### **11.14 Training**

Each PPP Co must, and must ensure that its Associates:

- (a) comply with the State's "State Government Building and Construction Contracts - Structured Training Policy (10% Policy)" and the requirements of Part 1 of Annexure 9 to the Performance Specification;
- (b) provide training and instruction in accordance with the Project Training Management Plan; and
- (c) keep and maintain comprehensive and detailed training and instruction records and provide the State's Representative, the Independent Verifier or their nominees, upon request, with access to such records.

### **11.15 Local Industry Participation**

Each PPP Co must, and must ensure that its Associates, implement the Local Industry Participation Plan and otherwise comply with:

- (a) the State's Local Industry Participation Policy; and

- (b) Part 1 of Annexure 9 to the Performance Specification.

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## 12. D&C Phase

### 12.1 D&C Activities

Each PPP Co:

- (a) must carry out, and ensure the State Works Contractor and the NB Works Contractor carry out, the D&C Activities in accordance with the State Project Documents and using D&C Best Practices;
- (b) accepts full responsibility for all construction means, methods and techniques used in the performance of the D&C Activities; and
- (c) must provide, and ensure that the State Works Contractor and the NB Works Contractor provide, everything (including labour, materials, plant and equipment) necessary for the design, construction and commissioning of the Project Works.

### 12.2 D&C Program

- (a) **(Update):** The PPP Cos must update the D&C Program as required by the Documentation Schedule and Annexure 8 to the Performance Specification.
- (b) **(Contents):** Each update of the D&C Program must show or contain the details required by the Documentation Schedule and Annexure 8 to the Performance Specification.
- (c) **(Design Documentation):** The D&C Program must make due allowance for the Design Documentation to be submitted to the State and the Independent Verifier in a manner and at a rate which will give the State and the Independent Verifier the opportunity to review the Design Documentation within the periods of time which they may review the Design Documentation under the Documentation Schedule.
- (d) **(No relief):** Any review of or comments upon a program (including the D&C Program) by the State or the Independent Verifier will not:
  - (i) relieve a PPP Co from or alter its liabilities or obligations under the State Project Documents;
  - (ii) evidence or constitute an extension of time or a direction by the State to accelerate, disrupt, prolong or vary any, or all, of the Project Activities; or
  - (iii) affect the time for performance of the State's obligations under the State Project Documents, including oblige the State to do anything earlier than is necessary to enable the PPP Cos to achieve:
    - A. NB Practical Completion at least 2 months prior to Tollroad Completion (or such later date as may be notified by the State under clause 8.6 (Extension of time) of the NB Works Deed);
    - B. EWAG Practical Completion by the Date for EWAG Practical Completion;
    - C. Tollroad Completion and Tolling System Completion by the Date for Tollroad Completion; or

D. Close-Out by the Date for Close-Out.

### 12.3 Progress reports

Without limiting each PPP Co's other reporting obligations under this deed, the PPP Cos must give the State and the Independent Verifier monthly reports on the D&C Activities in accordance with the Documentation Schedule.

### 12.4 Subcontracting

- (a) **(Engagement of D&C Contractor not to limit the PPP Cos' obligations):** The engagement by each PPP Co, the State Works Contractor and the NB Works Contractor of the D&C Contractor or any other subcontractor to perform some or all of the obligations of that PPP Co, the State Works Contractor or the NB Works Contractor under the State Project Documents will not limit or affect the PPP Cos', the State Works Contractor's or the NB Works Contractor's obligations or liability under the State Project Documents.
- (b) **(Each PPP Co liable for D&C Contractor's acts):** Each PPP Co will be vicariously liable to the State for the acts and omissions of the D&C Contractor, its subcontractors and their respective Associates in performing the Project Activities as if such acts or omissions were the acts or omissions of that PPP Co.
- (c) **(Awareness of Original D&C Contract):** The State and each PPP Co acknowledge and agree that each PPP Co's obligations under this deed are not lessened or otherwise affected by the State's awareness of the terms of the Original D&C Contract.
- (d) **(Notification):** Each PPP Co must notify the State of, and if the State requires, give the State:
  - (i) access to, any proposed or executed contract in respect of the D&C Activities (regardless of whether or not that PPP Co is a party to that contract) with a contract sum of more than \$50,000 (including all plans, specifications and drawings relating to that contract); and
  - (ii) a copy of, any proposed or executed contract in respect of the D&C Activities (regardless of whether or not that PPP Co is a party to that contract) with a contract sum of more than \$10 million (including all plans, specifications and drawings related to that contract),except in the case of any proposed contract in respect of the D&C Activities that relates to the design and supply of all or any part of the Tollroad Systems, in which case clause 20.17 will apply.
- (e) **(Prescribed terms):** Each PPP Co must ensure that the D&C Contractor includes a clause in each contract entered into by the D&C Contractor with any subcontractor, supplier or consultant which provides that if this deed is terminated under clause 8.7, clause 26.12 or clause 41.5:
  - (i) subject to the terms of the D&C Side Deed, the D&C Contractor may terminate the relevant contract; and
  - (ii) the D&C Contractor will pay to the subcontractor, supplier or consultant (as the case may be) an early termination amount equal to the amount determined by the Independent Verifier as being:

- A. the aggregate of:
- 1) contract value of the work properly executed in accordance with the contract;
  - 2) reasonable costs and expenses properly incurred in expectation of completing the work under the contract;
  - 3) liabilities to third parties (excluding any Related Body Corporate) for termination; and
  - 4) 2% of the unpaid balance of the contract sum on account of profit foregone;
- B. less the total amounts paid on account of the contract sum.

## 12.5 Signage

- (a) **(No signage):** Subject to clauses 12.5(b) and 12.5(d), the PPP Cos must not, and must ensure that its Associates in carrying out the Project Activities do not, erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of Project Works or the Licensed Construction Areas (or permit any third party to do so) at any time prior to the later of the Date of Close-Out, the Date of NB Final Completion and the Date of EWAG Final Completion.
- (b) **(Exceptions):** Prior to the Date of Close-Out, the PPP Cos may only (with the prior written approval of the State) erect the following signage on or near the Licensed Construction Areas or Affected Roads (as applicable):
- (i) temporary directional signage to assist businesses in the vicinity of the Licensed Construction Areas, access to which has been, or is likely to be, adversely affected by the D&C Activities;
  - (ii) signage required by Law or reasonably required for the safety and security of the Project Works;
  - (iii) project identification signage approved by the State;
  - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the D&C Activities; and
  - (v) directional and other signage necessary to inform, and direct the movement of, motorists, pedal cyclists and pedestrians in the vicinity of the Licensed Construction Areas.
- (c) **(Removal):** All signs erected in accordance with this clause must be removed, and any damage caused must be made good by the PPP Cos as a condition precedent to Close-Out.
- (d) **(Approved advertising signage):** Nothing in this clause 12.5 will prevent a PPP Co from installing and maintaining the advertising signage as described in Schedule 13. However, each PPP Co acknowledges and agrees that:
- (i) the relevant PPP Co must obtain all necessary Approvals in respect of such signage; and

- (ii) the State has not made, and is under no obligation to make, any investigation with respect to the legality of such signage or to assist with any required Approval by the State (in its capacity as an Authority) or any other Authority.

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## 13. Design

### 13.1 Design warranties

Each PPP Co warrants that:

- (a) **(Performance Specification):**
  - (i) it has checked and carefully considered the requirements of the Performance Specification;
  - (ii) the Concept Design and the EWAG Concept Design have been prepared by TQ Trustee and the NB Works Contractor respectively, and will be fit for their intended purposes as specified in, or ascertainable from, the State Project Documents;
  - (iii) the Performance Specification is proper, adequate and fit for its intended purposes as specified in, or ascertainable from, the State Project Documents (including for the purpose of enabling each PPP Co, the State Works Contractor and the NB Works Contractor to carry out the Project Activities in accordance with this deed, the State Works Deed, the EWAG Works Deed and the NB Works Deed including so as to satisfy the other requirements of this clause 13.1); and
  - (iv) except as contemplated by clause 26, it has taken into consideration and made due allowance for all risks and costs associated with the carrying out of the Project Activities;
- (b) **(Design):** the design of the Project Works (including all Design Documentation) will:
  - (i) be and will remain at all relevant times fit for its intended purposes as specified in, or ascertainable from, the State Project Documents; and
  - (ii) be completed in accordance with, and satisfy the requirements of the State Project Documents;
- (c) **(Construction):** construction of the Project Works in accordance with the design (including the AFC Design Documentation) will satisfy the requirements of the State Project Documents; and
- (d) **(Fit for purpose):** the Project Works will:
  - (i) be completed in accordance with, and satisfy the requirements of the State Project Documents;
  - (ii) upon NB Practical Completion, EWAG Practical Completion, Tolling System Completion, EWAG Final Completion, NB Final Completion and Close-Out, respectively, be fit for their intended purposes as specified in, or ascertainable from, the State Project Documents; and

- (iii) remain at all times fit for their intended purposes as specified in, or ascertainable from, the State Project Documents.

## 13.2 Preparation of Design Documentation

- (a) **(Completion of Design):** Each PPP Co must ensure that the design of the Project Works is developed and completed in accordance with the State Project Documents and for this purpose must ensure that all relevant Design Documentation is prepared.
- (b) **(Requirements for Design Documentation):** The Design Documentation for each discrete component or package of the Project Works must:
  - (i) comply with the requirements of the State Project Documents (including the Documentation Schedule); and
  - (ii) be fit for the purpose of construction of the Project Works in accordance with the State Project Documents.
- (c) **(Submission of Design Documentation):** Each PPP Co must submit the Design Documentation to the State and the Independent Verifier in accordance with the Documentation Schedule.
- (d) **(Certifications):** At the time of submission of each package of Stage 2 Design Documentation submitted pursuant to clause 13.2(c), the PPP Cos must provide to the State and the Independent Verifier:
  - (i) a certificate (in the form set out in the Certification Schedule) from the PPP Cos confirming that the Stage 2 Design Documentation complies with the requirements of the State Project Documents;
  - (ii) a certificate (in the form set out in the Certification Schedule) from the Designer confirming that the Stage 2 Design Documentation complies with the requirements of the State Project Documents;
  - (iii) a certificate (in the form set out in the Certification Schedule) from the Proof Engineer and Construction Verifier confirming that the Stage 2 Design Documentation complies with all of the fire and life safety requirements of the State Project Documents; and
  - (iv) any other certificates or reports required under the State Project Documents (including the Certification Schedule and the Documentation Schedule).
- (e) **(Explanation of Design Documentation):** If required by the Independent Verifier or the State, each PPP Co must make available the appropriate design personnel (including the Proof Engineer and Construction Verifier) to:
  - (i) explain any Design Documentation; and
  - (ii) provide such information regarding any Design Documentation as the Independent Verifier or the State reasonably requests.
- (f) **(Contractor, State and Independent Verifier):** It is acknowledged by the State and each PPP Co that the Independent Verifier, the State and the PPP Cos may consult and confer with each other as to any proposed Design Documentation prior

to the formal submission of the Design Documentation by the PPP Cos to the Independent Verifier and to the State under clause 13.2(c).

### **13.3 Preconditions to commencement of construction**

Each PPP Co must ensure that construction of a discrete component or package of the Project Works does not commence unless:

- (a) the PPP Cos have submitted the Stage 2 Design Documentation relating to that component or package to the State and the Independent Verifier in accordance with clause 13.2(c);
- (b) the PPP Cos have provided to the State and the Independent Verifier the certifications referred to in clause 13.2(d);
- (c) the State has been given an opportunity to review and comment on the Stage 2 Design Documentation in accordance with clause 13.2(c) and the Documentation Schedule; and
- (d) the Independent Verifier has verified that the Stage 2 Design Documentation complies with the State Project Documents, with any comments provided by the State within the period contemplated by the Documentation Schedule addressed by the Independent Verifier as part of the verification.

### **13.4 No obligation to review**

- (a) **(No duty of care):** The State does not assume or owe any duty of care to a PPP Co to review, or in reviewing, any Design Documentation submitted by the PPP Cos for any errors, omissions or compliance with the State Project Documents.
- (b) **(No relief):** No review of, consultations or conferring in relation to, comments upon, or failure to review, consult, confer or comment upon, any Design Documentation submitted by a PPP Co or any other act or omission of the State in respect of any Design Documentation will:
  - (i) relieve the PPP Cos from, or alter or affect, the PPP Cos' liabilities or responsibilities whether under any State Project Document or otherwise according to Law; or
  - (ii) prejudice the State's rights against the PPP Cos whether under the State Project Documents or otherwise according to Law.

### **13.5 Resolution of ambiguities**

If there is any ambiguity, discrepancy or inconsistency in the documents which make up this deed (such as the Performance Specification) or between this deed and any AFC Design Documentation:

- (a) where the ambiguity, discrepancy or inconsistency is in the documents which make up this deed, the order of precedence set out in clause 1.7(a) will apply;
- (b) where the ambiguity, discrepancy or inconsistency is between this deed and any part of the AFC Design Documentation, the higher standard, quality, level of service or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, this deed will prevail;

- (c) if it is discovered by the State or a PPP Co, that party must promptly notify the other of such discovery; and
- (d) the State may instruct a PPP Co as to the course it must adopt within 5 Business Days of the notice under clause 13.5(c).

An instruction given by the State under clause 13.5(d) will not constitute a Modification or otherwise entitle a PPP Co to make any Claim against the State arising out of or in any way in connection with the instruction.

### **13.6 Concept Design**

Subject to clauses 22 and 26 of this deed, clause 11 (Performance Specification design changes) of the EWAG Works Deed and clause 6 (Performance Specification design changes) of the NB Works Deed, each PPP Co accepts all risks arising out of each of the Concept Design and the EWAG Concept Design, including the risk that:

- (a) it will not be fit for its intended purpose as specified in, or ascertainable from, the State Project Documents; and
- (b) the Project Works will cost more than anticipated to construct.

Subject to clauses 13.7(b), 13.7(c) and 14.1(a)(ii), without limiting each PPP Co's obligations under the State Project Documents, each PPP Co must do whatever may be necessary to ensure that the Project Works are designed and constructed in accordance with the Concept Design and the EWAG Concept Design.

### **13.7 Performance Specification design changes**

- (a) The parties acknowledge that:
  - (i) the process of developing the design from the Concept Design and the EWAG Concept Design to the Design Documentation may (subject to this clause 13.7) result in changes to the design set out in the Concept Design and the EWAG Concept Design; and
  - (ii) the development of Design Documentation packages may (subject to this clause 13.7) require AFC Design Documentation previously verified by the Independent Verifier under clause 13.3 to be further developed.
- (b) A PPP Co must not make a change referred to in clause 13.7(a) to the Concept Design unless the change relates to the AL Works and:
  - (i) the change is notified to the Independent Verifier and is necessary to comply with the Performance Specification (Part 1) where the Performance Specification (Part 1) imposes the greater or higher requirement, standard, level of service or scope;
  - (ii) the relevant PPP Co demonstrates to the satisfaction of the Independent Verifier that:
    - A. the change complies with the Performance Specification (Part 1) subject to any relevant "Agreed Exceptions" (as defined in the Performance Specification) or has been consented to by the State pursuant to clause 13.7(c); and

B. the change is consistent with the design intent in the Concept Design and (without limitation) does not result in a lessening of any standard, level of service, scope or requirement for any work set out in the Concept Design, including any reduction in:

- 1) capacity;
- 2) durability;
- 3) aesthetics of visible features;
- 4) whole of life performance;
- 5) functional performance;
- 6) safety;
- 7) security;
- 8) community amenity;
- 9) community benefits; or
- 10) user benefits,

of any part of the Project Works, or has been consented to by the State pursuant to clause 13.7(c); or

(iii) the change is accepted or approved by the State in accordance with clause 22.

(c) Upon the written request of the relevant PPP Co, the State may give its written consent to a change of the kind referred to in clause 13.7(a) that:

- (i) does not comply with the Performance Specification (Part 1); and/or
- (ii) is not consistent with the design intent in the Concept Design and/or results in a lessening of any standard, level of service, scope or requirement for any work set out in the Concept Design, including a reduction in any one or more of the matters referred to in clause 13.7(b)(ii)B,

and such consent may be as to part or all of the proposed change.

(d) The State agrees to use its reasonable endeavours to respond to any request made under clause 13.7(c) within 10 Business Days of such request, however each PPP Co acknowledges and agrees that the State has no liability to either PPP Co if the State does not respond within this timeframe.

(e) The PPP Cos must provide the State with such information as the State requests for the purpose of considering a written request from a PPP Co of the nature referred to in clause 13.7(c) and within such time as the State prescribes.

(f) For the avoidance of doubt, if the State elects in its absolute discretion not to provide consent of the nature referred to in clause 13.7(c), and the change is not otherwise permissible pursuant to clauses 13.7(b)(i) or 13.7(b)(ii), the PPP Cos may submit a request, with respect to the change, under clause 22.2.

- (g) For the avoidance of doubt, where a change occurs in accordance with this clause 13.7, the PPP Cos will have no entitlement to make any Claim against the State.

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## 14. Construction

### 14.1 Construction

Subject to clause 13.5, each PPP Co must ensure that the Project Works are constructed:

- (a) in accordance with:
- (i) the requirements of the State Project Documents (including the Performance Specification);
  - (ii) the AFC Design Documentation; and
  - (iii) any Modification:
    - A. directed by the State by a document titled "Modification Order"; or
    - B. approved by the State by a document titled "Modification Approval";
- (b) with good workmanship and materials which are:
- (i) new and free of Defects or other imperfections; and
  - (ii) of the standard specified in the Performance Specification, or if no standard is specified, of a standard consistent with the best industry standards for work of a similar nature to the Project Works;
- (c) so that they are, and will remain at all relevant times, fit for their intended purposes as specified in, or ascertainable from, the State Project Documents; and
- (d) so that the Tollroad is wholly located within the Tollroad Area, EWAG is wholly located within the EWAG Area (other than BAC EWAG which must be wholly located on the BAC Land) and the Busway is wholly located within the Busway Area.

### 14.2 Independent Verifier's review of construction

- (a) **(Review by Independent Verifier):** The Independent Verifier must continually review (by general overview and reasonable checking) the construction of the Project Works during the performance of the D&C Activities so that it may form an opinion as to whether or not the Project Works are being constructed in accordance with the requirements of the State Project Documents.
- (b) **(Explanation of construction):** If required by the Independent Verifier, each PPP Co must make available appropriate personnel to:
- (i) explain the construction of the Project Works; and
  - (ii) provide such information regarding the construction of the Project Works as the Independent Verifier reasonably requests.

- (c) **(Certification):** Each PPP Co must provide to the State and the Independent Verifier, at the times required by the Certification Schedule:
- (i) a certificate (in the form set out in the Certification Schedule) from that PPP Co confirming that that PPP Co is satisfied that the construction of the Project Works is in accordance with the AFC Design Documentation; and
  - (ii) a certificate (in the form set out in the Certification Schedule) from the Designer confirming that the Designer is satisfied that the construction of the Project Works is in accordance with the AFC Design Documentation.
- (d) **(Notice of non-compliance):** If the Independent Verifier believes that the Project Works are not being constructed in accordance with the requirements of the State Project Documents, the Independent Verifier must give notice to the State and the PPP Cos that, in its opinion, the Project Works are not being constructed in accordance with the requirements of the State Project Documents together with its reasons for forming that opinion.
- (e) **(PPP Cos' response):** Within 5 Business Days of receipt of the Independent Verifier's notice under clause 14.2(d), the PPP Cos must:
- (i) notify the State and the Independent Verifier of any matters in respect of which it disagrees with the Independent Verifier's opinion together with its reasons for doing so ("**Explanation**"); and
  - (ii) to the extent it does not disagree, provide a plan and a program for the rectification of any non-compliance ("**Remediation Plan**").
- (f) **(Notice by Independent Verifier):** Within 7 Business Days of receipt of the Explanation and/or Remediation Plan, the Independent Verifier must give notice to the State and the PPP Cos of its opinion as to whether or not the Explanation and/or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion.
- (g) **(PPP Cos must satisfy Independent Verifier):** To the extent the Explanation and/or the Remediation Plan does not satisfactorily address the Independent Verifier's concern, the PPP Cos must continue to consult with the Independent Verifier and amend its Explanation and/or Remediation Plan until the Independent Verifier is satisfied with the Explanation and/or Remediation Plan. The Independent Verifier must notify the State and the PPP Cos when it is satisfied with the Explanation and/or Remediation Plan.
- (h) **(Compliance with Remediation Plan):** When the Independent Verifier notifies the PPP Cos that the Remediation Plan is satisfactory, the relevant PPP Co must:
- (i) comply with the Remediation Plan; and
  - (ii) when it believes it has rectified the non-compliance, provide a certificate (in the form set out in the Certification Schedule) confirming that the non-compliance has been rectified in accordance with the requirements of this deed.

### 14.3 Defects in respect of the Tollroad

- (a) **(Notification by a PPP Co):** If a PPP Co identifies any Defect in respect of the Tollroad, the PPP Cos must immediately notify the State and the Independent Verifier, and expeditiously and diligently progress correction of that Defect.
- (b) **(Notification by the State):** If the State believes that there is any Defect in respect of the Tollroad, it may give notice to the PPP Cos specifying the Defect.
- (c) **(Dispute):** If the PPP Cos disagree with any notice given by the State under clause 14.3(b) then they must, within 5 Business Days of receipt of that notice, give notice of their disagreement to the State. The State and the PPP Cos must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days after the date of that notice, either party may, by notice to the other and the Independent Verifier, refer the matter for determination by the Independent Verifier, who must within 10 Business Days make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.
- (d) **(The relevant PPP Co to correct Defect):** If the State gives a notice under clause 14.3(b) and the PPP Cos do not give notice under clause 14.3(c) or, if they do, the Independent Verifier determines that a Defect exists, the relevant PPP Co must expeditiously and diligently correct the Defect.

### 14.4 Accommodation Works

- (a) **(Notice to Owner):** Where any Accommodation Works are required to be carried out on a Parcel, a PPP Co must, not less than 15 Business Days prior to the day upon which that PPP Co intends to commence the Accommodation Works, give a written notice to the owner or owners of the property and any occupiers (with a copy to the State) which complies with the requirements set out in section 4.11(d) of Part 1 of Annexure 2 to the Performance Specification.
- (b) **(Minimise inconvenience):** Upon being given access to any property for the purpose of carrying out any Accommodation Works, the relevant PPP Co must promptly carry out those Accommodation Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (c) **(Rehabilitate):** Each PPP Co must:
  - (i) rehabilitate each Parcel at least to the state it was in immediately prior to that PPP Co obtaining access; and
  - (ii) otherwise repair any damage or degradation to each such Parcel arising out of or in any way in connection with the performance of its obligations under this clause 14.4.

### 14.5 Progressive completion and handover of Returned Works

- (a) **(General obligations):** TQ Trustee must progressively complete the Returned Works and handover each Returned Facility to the relevant Facility Owner as soon as possible during the Concession Period so as to ensure that:
  - (i) any loss of amenity and inconvenience to the relevant Facility Owner is minimised;

- (ii) the completion of the Returned Works and handover of each Returned Facility occurs in a smooth and orderly manner consistent with the D&C Program (rather than in a compressed period immediately prior to Tollroad Completion and Tolling System Completion);
  - (iii) the Independent Verifier has a reasonable opportunity to consider whether each Returned Facility has been completed in accordance with this deed prior to the proposed handover; and
  - (iv) the achievement of NB Practical Completion, EWAG Practical Completion, Tollroad Completion and Tolling System Completion is not delayed.
- (b) **(Handover of Returned Works):** Handover of each Returned Facility to the relevant Facility Owner must not occur until:
- (i) the Returned Facility has been completed in accordance with the State Project Documents;
  - (ii) the relevant PPP Co has notified the State and the Independent Verifier that the Returned Facility has been completed in accordance with the State Project Documents and has given the Independent Verifier sufficient opportunity to review the relevant Returned Facility in accordance with clause 14.2(a);
  - (iii) the relevant PPP Co has provided to the State a notice in the form required by the Certification Schedule duly signed by the Independent Verifier; and
  - (iv) the relevant PPP Co has provided to the State and the Independent Verifier:
    - A. a notice in the form required by the Certification Schedule duly signed by the relevant Facility Owner; or
    - B. if the relevant Facility Owner has refused to sign the notice (or has failed to sign the notice within 30 days of receipt of notice from the relevant PPP Co), notwithstanding that the Returned Facility has been completed in accordance with this deed, a notice in the form required by the Certification Schedule signed by the relevant PPP Co, and the Independent Verifier has not objected (by notice to the relevant PPP Co) to the handover of that Returned Facility to the relevant Facility Owner within 10 Business Days of receipt of the notice.
- (c) **(Precondition to Close-Out):** The handover in accordance with clause 14.5(b) of each Returned Facility is a condition precedent to Close-Out.
- (d) **(No approval):** Each PPP Co acknowledges and agrees that the provisions of this clause 14.5, the progressive completion of the Returned Works and handover of each Returned Facility to the relevant Facility Owner, and any act or omission of the State or the Independent Verifier arising out of or in respect of or in connection with, such progressive completion and handover, will not:
- (i) constitute approval by the State of a PPP Co's performance of its obligations under this deed;

- (ii) be taken as an admission or evidence that each Returned Facility complies with the requirements of the State Project Documents;
- (iii) prejudice any rights or powers of the State whether under the State Project Documents or otherwise according to Law, including any rights which the State may have in respect of Defects; or
- (iv) restrict the Independent Verifier in making a determination or forming an opinion under clause 16 of this deed, clause 4.8 (Payment Claim Completion) of the State Works Deed, clause 14.3 (EWAG Practical Completion) of the EWAG Works Deed or clause 9.2 (NB Practical Completion) of the NB Works Deed, or raising any item of work (including, in respect of a Returned Facility) as a ground for determining that NB Practical Completion, EWAG Practical Completion, Payment Claim Completion, Tollroad Completion or Tolling System Completion has not been achieved.

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## **15. Time**

### **15.1 Commencement**

Subject to the EWAG Works Deed, each PPP Co must promptly commence, and ensure that the State Works Contractor and the NB Works Contractor promptly commence, performance of the Project Activities from the date of Financial Close.

### **15.2 Dates for completion**

Each PPP Co must:

- (a) ensure that the NB Works Contractor achieves NB Practical Completion and NB Final Completion in accordance with the NB Works Deed and EWAG Practical Completion and EWAG Final Completion in accordance with the EWAG Works Deed;
- (b) use its best endeavours, and ensure that the State Works Contractor uses its best endeavours, to achieve:
  - (i) Tollroad Completion by the Date for Tollroad Completion; and
  - (ii) Close-Out by the Date for Close-Out; and
- (c) without limiting clauses 15.2(a) and 15.2(b), expeditiously and diligently progress, and ensure that the State Works Contractor and the NB Works Contractor expeditiously and diligently progress, their D&C Activities.

### **15.3 Acceleration**

If a PPP Co, the State Works Contractor or the NB Works Contractor chooses to compress the D&C Activities or otherwise accelerate progress:

- (a) the State will not be obliged to take any action to assist or enable that PPP Co, the State Works Contractor or the NB Works Contractor to achieve any particular sequencing or rate of progress of the Project Activities; and
- (b) the time for the carrying out of the State's obligations will not be affected.

## 15.4 Delays

- (a) **(Notification by a PPP Co):** If a PPP Co becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Tollroad Completion or Close-Out, it must promptly give the State:
  - (i) a notice setting out detailed particulars of the delay; and
  - (ii) a detailed corrective action plan in accordance with clause 15.5.
- (b) **(Notification by the State):** If the State reasonably believes that the PPP Cos will not achieve:
  - (i) Tollroad Completion by the Date for Tollroad Completion; or
  - (ii) Close-Out by the Date for Close-Out,

the State may give notice to that effect to the PPP Cos and the PPP Cos must then give the State a detailed corrective action plan in accordance with clause 15.5.
- (c) **(Mitigation):** Each PPP Co must take all reasonable steps to preclude the cause of any delay to the D&C Activities, and to mitigate or minimise the consequences of any delay.

## 15.5 Corrective action plan

- (a) **(Contents):** Each corrective action plan which the PPP Cos must provide under clause 15.4 must show how the PPP Cos propose to avoid, mitigate or minimise the consequences of the delay.
- (b) **(State may reject):** The State may, within 5 Business Days of receipt of a corrective action plan, give notice to the PPP Cos that it does not believe that implementation of the corrective action plan will enable the PPP Cos to mitigate the consequences of the delay.
- (c) **(Resubmission of corrective action plan):** If the State gives a PPP Co a notice under clause 15.5(b), the relevant PPP Co must amend and resubmit the corrective action plan to the State after which clauses 15.5(b) and 15.5(c) will continue to apply until the State does not issue a notice under clause 15.5(b).
- (d) **(Compliance with corrective action plan):** Each PPP Co must, and must ensure that its Associates, comply with a corrective action plan for which the State does not issue a notice under clause 15.5(b).
- (e) **(No relief):** Each PPP Co will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
  - (i) any notice given by the State under clause 15.5(b); or
  - (ii) implementation of any corrective action plan in respect of which the State has or has not issued a notice under clause 15.5(b).

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## 16. Completion

### 16.1 General acknowledgements

- (a) **(Timing of completion):** The PPP Cos acknowledge and agree that Tolling System Completion may occur at the same time as, or after, Tollroad Completion.
- (b) **(Obligation concerning completion):** The PPP Cos acknowledge and agree that, despite clause 16.1(a), the PPP Cos must apply for a Certificate of Tollroad Completion in accordance with this clause 16 as soon as it reasonably considers that it has achieved Tollroad Completion, irrespective of whether or not Tolling System Completion has been achieved.

### 16.2 Notice before Completion

- (a) **(NB Project):** The PPP Cos must ensure that the NB Works Contractor gives the State and the Independent Verifier separate notice with respect to NB Practical Completion in accordance with the NB Works Deed.
- (b) **(EWAG Project):** The PPP Cos must ensure that the NB Works Contractor gives the State and the Independent Verifier separate notice with respect to EWAG Practical Completion in accordance with the EWAG Works Deed.
- (c) **(AL Project):** The PPP Cos must give the State (with a copy to the Independent Verifier) separate notices at least:
  - (i) 60 Business Days; and
  - (ii) 20 Business Days,prior to the date upon which it reasonably expects to achieve Tollroad Completion and Tolling System Completion.

### 16.3 Tollroad Completion and Tolling System Completion

- (a) **(Notice by the PPP Cos):** When the PPP Cos consider that they have achieved Tollroad Completion or Tolling System Completion (as the case may be), the PPP Cos must:
  - (i) notify the State and the Independent Verifier of their opinion;
  - (ii) request the Independent Verifier to issue:
    - A. a Certificate of Tollroad Completion stating the date on which the PPP Cos achieved Tollroad Completion; or
    - B. a Certificate of Tolling System Completion stating the date on which the PPP Cos achieved Tolling System Completion; and
  - (iii) provide the State and the Independent Verifier with a detailed list of the work (including minor Defect correction) remaining to be performed in its opinion to achieve:
    - A. in the case of a request for a Certificate of Tollroad Completion, Tolling System Completion; or

- B. in the case of a request for a Certificate of Tolling System Completion, Close-Out.
- (b) **(Notice by the State):** Notwithstanding that the PPP Cos may not have issued a notice under clause 16.3(a), when the State considers that the PPP Cos have achieved Tollroad Completion, the State may:
- (i) notify the PPP Cos and the Independent Verifier of its opinion; and
  - (ii) request the Independent Verifier to issue a Certificate of Tollroad Completion stating the date on which the PPP Cos achieved Tollroad Completion.
- (c) **(Independent Verifier to make determination):** The parties acknowledge that within 15 Business Days of the PPP Cos complying with clause 16.3(a) or the State giving notice under clause 16.3(b), the Independent Verifier is required to determine whether Tollroad Completion and/or Tolling System Completion (as the case may be) has been achieved and either:
- (i) if Tollroad Completion and/or Tolling System Completion (as the case may be) has been achieved:
    - A. issue a Certificate of Tollroad Completion or a Certificate of Tolling System Completion to the State and the PPP Cos:
      - 1) certifying that Tollroad Completion or Tolling System Completion (as the case may be) has taken place;
      - 2) stating the Date of Tollroad Completion or the Date of Tolling System Completion (as the case may be); and
      - 3) listing any minor Defects of the kind referred to in the definition of Tollroad Completion or Tolling System Completion (as applicable); and
    - B. include in the Certificate of Tollroad Completion or Certificate of Tolling System Completion (as the case may be) details of the Independent Verifier's opinion of the work remaining to be performed to achieve:
      - 1) in the case of a Certificate of Tollroad Completion, Tolling System Completion; or
      - 2) in the case of a Certificate of Tolling System Completion, Close-Out; or
  - (ii) if Tollroad Completion and/or Tolling System Completion (as the case may be) has not been achieved:
    - A. issue a notice to the State and the PPP Cos listing the work remaining to be performed to achieve Tollroad Completion or Tolling System Completion (as the case may be); or
    - B. issue a notice to the State and the PPP Cos stating that the Tollroad Completion or Tolling System Completion (as the

case may be) is so far from being achieved that it is not practicable to provide the list referred to in clause 16.3(c)(ii)A,

after which each PPP Co must continue to expeditiously and diligently progress the PPP Co AL D&C Activities (and ensure that the State Works Contractor continues to expeditiously and diligently progress the SWC D&C Activities and ensure that the NB Works Contractor continues to expeditiously and diligently progress the NB Project Activities and the EWAG Project Activities) to achieve Tollroad Completion or Tolling System Completion (as the case may be).

- (d) **(Correction of Defects which did not prevent Completion):** Without limiting each PPP Co's other obligations under this deed (including in respect of Defects), immediately upon receipt of a Certificate of Payment Claim Completion, Certificate of Tollroad Completion or a Certificate of Tolling System Completion, each PPP Co must expeditiously and diligently correct (and ensure that the State Works Contractor and the NB Works Contractor expeditiously and diligently correct, as applicable) all of the Defects specified in the Certificate. All such Defects must be corrected as a condition precedent to Close-Out.
- (e) **(Further notice by the PPP Cos):** The PPP Cos must give notice to the State and the Independent Verifier when the work listed in a notice issued by the Independent Verifier under clause 16.3(c)(ii)A has been completed.
- (f) **(Resubmission):** Clauses 16.3(c) and 16.3(d) will apply in respect of the PPP Cos' notice under clause 16.3(e) in the same way as if it were the original notice given under clause 16.3(a).
- (g) **(No restriction on Independent Verifier):** The Independent Verifier, in making its determination as to whether Tollroad Completion or Tolling System Completion has been achieved:
  - (i) will not be restricted by any notice, list or opinion which it previously provided to the PPP Cos under clause 16.3(c); and
  - (ii) will be entitled to raise any other items of work (other than the minor Defects of the kind referred to in the definition of Tollroad Completion or Tolling System Completion (as applicable)) as a ground for determining that Tollroad Completion or Tolling System Completion (as the case may be) has not been achieved.

#### **16.4 Effect of Certificate of Completion**

- (a) **(Date is final and binding):** Subject to clause 16.4(b), the Date of Tollroad Completion or the Date of Tolling System Completion specified in a Certificate of Tollroad Completion or a Certificate of Tolling System Completion (as the case may be) will be final and binding for all purposes and not capable of challenge on any basis other than manifest error.
- (b) **(No approval):** A Certificate of Tollroad Completion or Tolling System Completion will not:
  - (i) constitute an approval by the State of a PPP Co's performance of its obligations under the State Project Documents;

- (ii) be taken as an admission or evidence that the Project Works or the Tollroad complies with the State Project Documents; or
- (iii) prejudice any rights or powers of the State whether under the State Project Documents or otherwise according to Law, including any rights which the State may have in respect of Defects.

## **16.5 NB Practical Completion**

- (a) If, but for the achievement of NB Practical Completion, Tollroad Completion has otherwise been, or, in the State's opinion (acting reasonably) is reasonably able to be, achieved, the State may, in its absolute discretion, waive the requirement that NB Practical Completion be achieved in order for Tollroad Completion to be achieved.
- (b) If the State elects to make the waiver described in clause 16.5(a), it may, in its absolute discretion, as a condition of that waiver, require that NB Practical Completion be achieved in order for Tolling System Completion to be achieved.
- (c) If the NB Works Deed is terminated and the NB Works Contractor's rights and obligations are terminated with respect to the NB Project under clauses:
  - (i) 18.2(d)(i) or 18.2(g) (Termination by NB Works Contractor) of the NB Works Deed; or
  - (ii) 18.4 (Termination of NB Project) of the NB Works Deed,

then the State is obliged to exercise its discretion under clause 16.5(a), achievement of NB Practical Completion cannot be a requirement to achieve Tolling System Completion, and NB Final Completion will not be required to achieve Close-Out.

## **16.6 EWAG Practical Completion**

- (a) If, but for the achievement of EWAG Practical Completion, Tollroad Completion has otherwise been, or, in the State's opinion (acting reasonably) is reasonably able to be, achieved, the State may, in its absolute discretion, waive the requirement that EWAG Practical Completion be achieved in order for Tollroad Completion to be achieved.
- (b) If the State elects to make the waiver described in clause 16.6(a), it may, in its absolute discretion, as a condition of that waiver, require that EWAG Practical Completion be achieved in order for Tolling System Completion to be achieved.
- (c) If:
  - (i) the EWAG Commencement Date occurs after the Decision Date and before the Sunset Date; or
  - (ii) the EWAG Works Deed is terminated and the NB Works Contractor's rights and obligations are terminated with respect to the EWAG Project under clauses:
    - A. 23.2(d)(i) or 23.2(g) (Termination by NB Works Contractor) of the EWAG Works Deed;
    - B. 23.4 (Termination of EWAG Project) of the EWAG Works Deed; or

- C. clause 13.5(c) (Extension of time) of the EWAG Works Deed applies,

then the State is obliged to exercise its discretion under clause 16.6(a), achievement of EWAG Practical Completion cannot be a requirement to achieve Tolling System Completion, and EWAG Final Completion will not be required to achieve Close-Out.

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## 17. Close-Out

### 17.1 Close-Out

- (a) **(Progression):** Each PPP Co must expeditiously and diligently progress the performance of the balance of its AL Works (and ensure that the State Works Contractor expeditiously and diligently progresses the balance of the State AL Works and that the NB Works Contractor expeditiously and diligently progresses the balance of the NB Returned Works and EWAG Returned Works) required to achieve Close-Out.
- (b) **(Notice of Close-Out):** When the PPP Cos consider that Close-Out has been achieved, the PPP Cos must:
- (i) notify the State and the Independent Verifier of their opinion; and
  - (ii) request the Independent Verifier to issue a Certificate of Close-Out stating the date on which Close-Out was achieved.
- (c) **(Independent Verifier to make determination):** The parties acknowledge that within 15 Business Days of the PPP Cos' notice under clause 17.1(b), the Independent Verifier is required to determine whether Close-Out has been achieved and either:
- (i) if Close-Out has been achieved, issue to the State and the PPP Cos a Certificate of Close-Out certifying that Close-Out has taken place and the Date of Close-Out; or
  - (ii) if Close-Out has not been achieved, issue a notice to the State and the PPP Cos listing the work remaining to be performed to achieve Close-Out.
- (d) **(PPP Cos to complete remaining work):** Without limiting each PPP Co's other obligations under this deed (including in respect of Defects), immediately upon receipt of a notice under clause 17.1(c)(ii), each PPP Co must expeditiously and diligently progress performance of the work specified in the notice which comprises its D&C Activities, and each PPP Co must procure that the State Works Contractor does likewise in relation to the SWC D&C Activities and that the NB Works Contractor does likewise in relation to the NB Project Activities and the EWAG Project Activities.
- (e) **(Further notice by the PPP Cos):** The PPP Cos must give notice to the State and the Independent Verifier when the work listed in the Independent Verifier's notice under clause 17.1(c)(ii) has been completed.
- (f) **(Resubmission):** Clauses 17.1(c) and 17.1(d) will apply in respect of the PPP Cos' notice under clause 17.1(e) in the same way as if it were the original notice under clause 17.1(b).

- (g) **(No restriction by Independent Verifier):** The Independent Verifier, in making a determination as to whether Close-Out has been achieved:
- (i) will not be restricted by any:
    - A. Certificate of EWAG Practical Completion, Certificate of NB Practical Completion, Certificate of Payment Claim Completion, Certificate of Tollroad Completion, or Certificate of Tolling System Completion;
    - B. notice, list or opinion already provided under:
      - 1) clauses 17.1(c)(ii) or 16.3(c)(i)B.2) of this deed;
      - 2) clauses 4.8(b)(i)C. or 4.8(b)(ii)A. (Payment Claim Completion) of the State Works Deed;
      - 3) clause 15.1(c)(ii) (EWAG Final Completion) of the EWAG Works Deed; or
      - 4) clause 10.1(c)(ii) (NB Final Completion) of the NB Works Deed;
    - C. list issued under:
      - 1) clause 16.3(a)(iii) of this deed;
      - 2) clause 4.8(a)(iii) (Payment Claim Completion) of the State Works Deed;
      - 3) clause 14.3(a)(iii) (EWAG Practical Completion) of the EWAG Works Deed; or
      - 4) clause 9.2(a)(iii) (NB Practical Completion) of the NB Works Deed; or
    - D. obligation of a PPP Co under this deed to correct (or to procure that the State Works Contractor or the NB Works Contractor, as applicable, correct) any Defects; and
  - (ii) will be entitled to raise any items of work as a ground for determining that Close-Out has not been achieved.

## 17.2 Effect of Certificate of Close-Out

- (a) **(Date is final and binding):** Subject to clause 17.2(b), the Date of Close-Out specified in a Certificate of Close-Out will be final and binding for all purposes and not capable of challenge on any basis other than manifest error.
- (b) **(No approval):** A Certificate of Close-Out will not:
  - (i) constitute an approval by the State of a PPP Co's performance of its obligations under the State Project Documents;
  - (ii) be taken as an admission or evidence that the AL Works, the EWAG Returned Works or the NB Returned Works comply with the State Project Documents; or

- (iii) prejudice any rights or powers of the State whether under the State Project Documents or otherwise according to Law, including any right which the State may have in respect of Defects.

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## 18. Defects for Returned Facilities

### 18.1 Correction of Defects

- (a) **(General Obligation):** TQ Trustee must correct (and procure that the State Works Contractor or the NB Works Contractor corrects, as applicable) all Defects in respect of the Returned Facilities during the relevant Defects Liability Period.
- (b) **(Notification by the State):** Without limiting clause 18.1(a), if, during a Defects Liability Period, the State believes there is a Defect in the Returned Facilities, then the State may, without prejudicing any other rights which the State may have under this deed or otherwise at law, give TQ Trustee a notice specifying the Defect and directing TQ Trustee to correct (and/or procure that the State Works Contractor and/or the NB Works Contractor corrects, as applicable) the Defect (or part of it), specifying a reasonable period of time within which this must occur.
- (c) **(Disputes):** If TQ Trustee disagrees with any notice under clause 18.1(b) then it must, within 5 Business Days of receipt of that notice or determination, give notice of its disagreement to the State. The State and TQ Trustee must use reasonable endeavours to resolve the matter the subject of the disagreement. If the matter is not resolved within 10 Business Days after the date of TQ Trustee's notice, either party may, by notice to the other and the Independent Verifier, refer the matter for determination by the Independent Verifier, who must within 10 Business Days make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination.
- (d) **(Compliance with the State Notice):** If the State directs TQ Trustee to correct a Defect under clause 18.1(b) prior to the expiration of the relevant Defects Liability Period and TQ Trustee does not give notice under clause 18.1(c) or, if it does, the Independent Verifier determines that a Defect exists, then TQ Trustee must correct the Defect (and TQ Trustee must procure that the State Works Contractor and/or the NB Works Contractor corrects, as applicable):
  - (i) within the time specified in State's notice;
  - (ii) at times agreed with the State and in accordance with the requirements of any other relevant Authority;
  - (iii) so as to minimise any adverse effect on the relevant part of the Returned Facilities; and
  - (iv) so as to minimise the inconvenience to possible users of the Tollroad, EWAG, the Busway or the Returned Facilities.
- (e) **(Notice of correction):** TQ Trustee must give notice to the State and the Independent Verifier that the Defect has been corrected promptly after the correction of the Defect.

### 18.2 Defects Liability Periods

Each Returned Facility has:

- (a) a Defects Liability Period which begins on:

- (i) the date on which TQ Trustee provides to the State and the Independent Verifier the last of the notices relating to that Returned Facility required under clauses 14.5(b)(ii), 14.5(b)(iii) (if applicable) and 14.5(b)(iv)A; or
- (ii) if clause 14.5(b)(iv)B applies, the date falling 10 Business Days after TQ Trustee has provided to the State and the Independent Verifier the last of the notices relating to that Returned Facility required under clauses 14.5(b)(ii), 14.5(b)(iii) (if applicable) and 14.5(b)(iv)B, provided that the Independent Verifier has not objected to the handover of the relevant Returned Facility as contemplated by that clause,

and which expires 12 months after the Date of Close-Out; and

- (b) a further Defects Liability Period of 12 months in respect of any work the subject of a notice from the State under clause 18.1(b) relating to a Returned Facility, which begins on the date on which the Defect is corrected.

### **18.3 Failure to comply with direction**

If TQ Trustee fails to comply with a notice given under clause 18.1, the State may (without limiting any other rights it may have):

- (a) apply for a court order for specific performance; or
- (b) correct the Defect itself or engage others to correct the Defect, in which case any Loss suffered or incurred by the State in doing so will be a debt due and payable from TQ Trustee to the State.

### **18.4 Rights not affected**

Neither the State's rights, nor a PPP Co's liability, whether under this deed or otherwise according to law in respect of Defects, whether before or after the expiration of any relevant Defects Liability Period or the O&M Phase, will be in any way affected or limited by:

- (a) the rights conferred upon the State or the Independent Verifier by this clause 18 or any other provision of this deed;
- (b) the exercise of, or the failure by the State or the Independent Verifier to exercise, any such rights; or
- (c) any direction of the State under this clause 18.

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## **19. O&M Phase**

### **19.1 Obligation to operate, maintain and repair**

- (a) **(General obligation):** TQ Operations must operate, maintain and repair the Tollroad and maintain and repair the Maintained Non-Tollroad Works throughout the O&M Phase so that:
  - (i) all traffic lanes of the Tollroad are open to the public at all times (except as permitted under clause 19.3) for the safe, efficient and continuous passage of vehicles;
  - (ii) the performance of the Tollroad and the Maintained Non-Tollroad Works meets the performance standards specified in the Performance

Specification (including those in Annexure 4 to the Performance Specification);

- (iii) the design life of each part of the Tollroad and the Maintained Non-Tollroad Works is maintained in accordance with the design life standards specified in the Performance Specification (including in Annexure 1 to the Performance Specification);
- (iv) the Tollroad and the Maintained Non-Tollroad Works are in a condition which will satisfy the handover conditions specified in the Performance Specification, including in Section 9 of Annexure 4 to the Performance Specification;
- (v) all Defects in the Tollroad or the Maintained Non-Tollroad Works are corrected as soon as possible;
- (vi) the Tollroad and the Maintained Non-Tollroad Works remain at all times fit for their intended purposes as specified in, or ascertainable from, the State Project Documents;
- (vii) the Tollroad is operated, maintained and repaired, and the Maintained Non-Tollroad Works are maintained and repaired, in accordance with O&M Best Practices; and
- (viii) the Project Activities in connection with the operation of the Tollroad (including the Tollroad Systems) are conducted in accordance with the requirements of the IP Licence Deed.

(b) **(Performance Specification):** The standards, tasks, obligations and other provisions contained or referred to in the Performance Specification (including in Annexure 4 to the Performance Specification and the Code of Maintenance Standard referred to in Annexure 4) represent the minimum requirements which TQ Operations must satisfy for the purposes of fulfilling the obligations specified in clause 19.1(a).

(c) **(Risk of non compliance):** TQ Operations bears the risk that:

- (i) compliance by it with the minimum requirements referred to in clause 19.1(b); and
- (ii) without limiting clause 19.1(c)(i), the development of, and compliance with, maintenance standards of the kind referred to in Annexure 4 of the Performance Specification and the Code of Maintenance Standard referred to in Annexure 4,

will not enable the obligations specified in clause 19.1(a) to be fulfilled.

(d) **(TQ Operations to carry out all necessary work):** Without limiting clause 19.1(c), TQ Operations must, at its own cost, carry out all work in addition to that necessary or desirable to meet the minimum requirements referred to in clause 19.1(a) to enable the obligations specified in clause 19.1(a) to be fulfilled.

(e) **(All work included):** Subject to any express term of this deed to the contrary, TQ Operations must provide all work and materials necessary for the O&M Activities whether or not they are expressly mentioned in this deed or the O&M Manuals.

- (f) **(No Claim):** Such work or materials must be undertaken and provided by TQ Operations at its own cost and will not constitute a Modification or otherwise entitle TQ Operations to make a Claim for payment for such work or materials.

## 19.2 Opening of Tollroad

- (a) **(No opening prior to Tollroad Completion):** The Tollroad may not be opened for public use prior to the Date of Tollroad Completion.
- (b) **(Open as soon as practicable):** TQ Operations must open all traffic lanes of the Tollroad to the public for the safe, efficient and continuous passage of vehicles as soon as practicable after the Date of Tollroad Completion (whether or not Tolling System Completion has been achieved).
- (c) **(Requirements for opening):** TQ Operations must:
  - (i) give notice to the State of its good faith estimate of the date on which it anticipates opening the Tollroad for public use at least 60 Business Days before the anticipated date of opening and update that estimate as soon as practicable if it materially changes;
  - (ii) give notice to the State of the date on which it intends to open the Tollroad for public use at least 20 Business Days prior to the intended date of opening;
  - (iii) otherwise liaise with the State to ensure the opening of the Tollroad is managed effectively;
  - (iv) effect all insurances required under clause 30.2 in relation to the Tollroad prior to opening the Tollroad for public use; and
  - (v) do those things required to be done under clauses 19.6, 19.7 and 30.12 prior to opening the Tollroad to public use.

## 19.3 TQ Operations to keep Tollroad open

- (a) **(Continuous opening):** Subject to clause 19.3(b), after TQ Operations has opened the Tollroad for public use, TQ Operations must keep all traffic lanes of the Tollroad open to the general public for the safe, efficient and continuous passage of vehicles at all times during the O&M Phase, whether or not Tolling System Completion has been achieved.
- (b) **(Closure in certain circumstances):** TQ Operations may close all or part of the Tollroad:
  - (i) in accordance with Annexure 12 of the Performance Specification; or
  - (ii) if it is necessary to close the Tollroad because of:
    - A. the requirements of any relevant Authority;
    - B. a material risk to the health or safety of the public;
    - C. emergency maintenance and/or repairs (excluding the routine maintenance specified in Annexure 4 to the Performance Specification); or
    - D. any other reason which the State agrees to.

- (c) **(Notice of closure):** TQ Operations must notify the State as soon as possible if it closes, or proposes to close, any lane of the Tollroad and the reasons for each closure and will use all reasonable endeavours to reopen the Tollroad as soon as possible after such closure.

#### 19.4 Performance of O&M Activities

- (a) **(Requirements):** Without limiting clause 19.1, TQ Operations must, in performing its O&M Activities:
  - (i) act in a timely and expeditious manner;
  - (ii) once it has commenced any O&M Activities, proceed with its O&M Activities expeditiously and take all reasonable steps (including rescheduling the commencement of other O&M Activities) to minimise any disruption or risk to users of the Tollroad;
  - (iii) give priority to the safety of users of the Tollroad or persons or property otherwise affected by the performance of its O&M Activities;
  - (iv) minimise the impact of the performance of the O&M Activities on users of the Tollroad or persons or property otherwise affected by its O&M Activities; and
  - (v) on completion of any O&M Activities, remove all temporary protection or other structures or equipment erected in connection with those O&M Activities as soon as practicable, and in a good and workmanlike manner.
- (b) **(Warranties):** Without limiting clause 19.1, TQ Operations warrants that:
  - (i) it will perform its O&M Activities using workmanship and materials of the highest standard which are fit for their intended purposes; and
  - (ii) if, in the performance of its O&M Activities, it is required to replace any worn, failed or defective parts, the replacement parts will be:
    - A. of equal quality to those required under this deed; and
    - B. fit for their intended purpose.
- (c) **(Advancements in technology):** TQ Operations acknowledges and agrees that its operation, maintenance and repair obligations extend to upgrading the Tollroad to incorporate advancements in technology or operation and maintenance practices as required by O&M Best Practices.

#### 19.5 O&M Manuals

- (a) **(TQ Operations to develop and maintain):** TQ Operations must submit the O&M Manuals in accordance with the Documentation Schedule as a condition precedent to Tollroad Completion.
- (b) **(Purpose):** TQ Operations acknowledges and agrees that the intended purposes of the O&M Manuals include:

- (i) to demonstrate to the State that TQ Operations has the understanding, capacity and capability at all times to carry out the O&M Activities in accordance with the requirements of this deed;
  - (ii) to allow the State to understand how TQ Operations will achieve the performance outcomes specified in this deed and otherwise fulfil its obligations under this deed; and
  - (iii) those purposes set out in the Performance Specifications.
- (c) **(Warranties):** TQ Operations warrants that:
- (i) the O&M Manuals will at all times be fit for their intended purposes as specified in, or ascertainable from, the State Project Documents;
  - (ii) the O&M Manuals will in any event be prepared, developed and updated using O&M Best Practices; and
  - (iii) compliance with the O&M Manuals will enable it, during the O&M Phase, to fulfil its obligations under this deed.
- (d) **(O&M Manuals):** TQ Operations must develop, continually review and, if necessary, update the O&M Manuals:
- (i) to take into account events or circumstances which will, or may reasonably be expected to affect the manner in which TQ Operations carries out the O&M Activities including:
    - A. Modifications;
    - B. changes in Law;
    - C. Approvals (including the conditions of Approvals);
    - D. the commencement of new phases or stages of design or construction as shown in the D&C Program; and
    - E. any breach or potential breach of the warranty in clause 19.5(c); and
  - (ii) as otherwise specified in the Performance Specification, including Annexure 9 to the Performance Specification,
- and promptly submit the updated O&M Manuals to the State and the Independent Verifier.
- (e) **(Review by the State):** The State may:
- (i) review the O&M Manuals submitted under this clause 19.5; and
  - (ii) if the O&M Manuals do not comply with the requirements of the State Project Documents, notify TQ Operations of that non-compliance within 15 Business Days of the submission of the O&M Manuals.

If TQ Operations receives a notice under clause 19.5(e)(ii), TQ Operations must promptly submit amended O&M Manuals to the State.

- (f) **(No obligation to review):** The State owes no duty of care to TQ Operations to review any O&M Manuals submitted by TQ Operations for errors, omissions or compliance with the State Project Documents.

No review of, comments upon, or notice in respect of, or any failure to review, comment upon or give notice in respect of any O&M Manuals submitted by TQ Operations or any other direction, act or omission of the State (including a notice under clause 19.5(e)) in respect of the O&M Manuals will in any way:

- (i) relieve TQ Operations from, or alter or affect, its liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law; or
- (ii) prejudice the State's rights against TQ Operations whether under the State Project Documents or otherwise according to Law.

- (g) **(Compliance with O&M Manuals):** TQ Operations must comply with the O&M Manuals which have been submitted to the State and in respect of which the State has not given notice under clause 19.5(e)(ii), unless it is necessary to depart from the O&M Manuals to ensure compliance with the State Project Documents.

- (h) **(No relief):** TQ Operations will not be relieved from compliance with any of its obligations under any State Project Documents or from any of its liabilities under any State Project Documents or otherwise according to Law as a result of:

- (i) compliance by TQ Operations with its obligations under this clause 19.5, including compliance with the O&M Manuals; or
- (ii) any failure by the State, or anyone else acting on the State's behalf, to detect any non-compliance including where any failure arises from any negligence on the part of the State or any other person.

Compliance by TQ Operations with its obligations under this clause 19.5 is not evidence of compliance by TQ Operations with its other obligations under the State Project Documents.

## 19.6 Maintenance budget

- (a) Not used.
- (b) **(Further budgets):** Before 30 June in each Financial Year, TQ Operations must give to the State:
  - (i) a revised budget in relation to the Maintenance and Repair Account for the Financial Year which will begin on 1 July; and
  - (ii) a budget in relation to the Maintenance and Repairs Account for the Financial Year following the Financial Year referred to in clause 19.6(b)(i).
- (c) **(Budget requirements):** Each budget referred to in this clause 19.6 must:
  - (i) specify authorised expenditure for each item referred to in clause 19.7(b) in such detail as the State may reasonably require; and
  - (ii) be reconciled with the Forecast Maintenance Program and provide such details as the State may reasonably require explaining any discrepancy.

## 19.7 Maintenance and Repairs Account

- (a) **(Established account):** TQ Operations must:
  - (i) establish an account to be known as the Maintenance and Repairs Account;
  - (ii) maintain that account in the name of TQ Operations with a financial institution nominated by TQ Operations and approved by the State (such approval not to be unreasonably withheld) or with a financial institution which is a party to the Debt Finance Side Deed;
  - (iii) give details of that account to the State;
  - (iv) notify the financial institution referred to in clause 19.7(a)(ii) of the charge over the Maintenance and Repairs Account in accordance with the State Security and procure, and copy the State with, acknowledgment of that notice from the financial institution; and
  - (v) procure the agreement of the financial institution referred to in clause 19.7(a)(ii) not to exercise any right of set off or combination of accounts in relation to the Maintenance and Repairs Account.
- (b) **(Account balance):** TQ Operations must ensure that the balance of the Maintenance and Repairs Account is at all times sufficient to fund periodic capital works, asset refurbishment and asset replacement for the Tollroad and the Maintained Non-Tollroad Works budgeted to be incurred in the next rolling 12 month period.
- (c) **(Application of moneys):** Moneys in the Maintenance and Repairs Account may only be applied for periodic capital works, asset refurbishment and asset replacement expenditure.
- (d) **(Records):** At the time it is required to provide each report under clause 19.9, TQ Operations must give the State records of expenditure from the Maintenance and Repairs Account for the previous quarter, sufficient to enable the State to readily reconcile those records to the relevant budget provided under clause 19.6.

## 19.8 Forecast Maintenance Program

- (a) **(TQ Operations to update):** At least every 5 years during the O&M Phase, TQ Operations must update the Forecast Maintenance Program to permit TQ Operations to comply with its operation, maintenance and repair obligations under this deed.
- (b) **(The State to receive):** TQ Operations must provide an updated Forecast Maintenance Program to the State before each 5 year anniversary of the date of Financial Close.
- (c) **(Notice from the State):** If the State considers that a Forecast Maintenance Program does not comply with the requirements of this clause, the State may give TQ Operations reasons for forming that opinion.
- (d) **(Consultation):** If the State gives notice under clause 19.8(c), TQ Operations must consult with the State in good faith with a view to reaching agreement on the Forecast Maintenance Program.

- (e) **(Disputes):** If the Forecast Maintenance Program is not agreed within 20 Business Days after the date of the State's notice under clause 19.8(c), either party may refer the matter for dispute resolution under clause 44.

## 19.9 Reports

Without limiting TQ Operations' other reporting obligations under this deed, TQ Operations must give the State and the Independent Verifier quarterly reports on the O&M Activities in accordance with the Documentation Schedule.

## 19.10 Failure to comply with O&M obligations

- (a) **(Notice to rectify):** If:

- (i) the O&M Manuals have not been maintained or complied with, as required by this deed;
- (ii) the O&M Manuals are deficient as a mechanism for ensuring that at the end of the O&M Phase the Tollroad will be in the handover condition required by the terms of this deed; or
- (iii) TQ Operations otherwise fails to comply with its obligations under clause 19.1,

the State may, at any time during the O&M Phase, issue to TQ Operations a notice requiring TQ Operations to rectify any specified non-conformances within 12 months.

- (b) **(O&M Bond):** If at the end of such 12 month period the non-conformances specified in a notice issued by the State in accordance with clause 19.10(a) have not been rectified in full, the State may issue to TQ Operations a notice to that effect and TQ Operations must provide to the State a bond for an amount decided by the State (which must be reasonable having regard to the nature of the non-conformances) up to \$20 million (Indexed) which complies with the requirements of clause 5 as security for the performance of TQ Operations' obligations under clause 19.1.

## 19.11 Operating qualifications

- (a) **(Qualifications):** TQ Operations must ensure that each entity that performs substantial operation, maintenance and/or repair obligations in respect of the Tollroad (other than another Tollroad Service Provider) ("**Relevant Entity**"):

- (i) is reputable and has sufficient experience and expertise in successfully operating, maintaining and repairing (as applicable) tollways, freeways or other roads;
- (ii) has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this deed; and
- (iii) is of sufficiently high financial and commercial standing to perform its obligations to the standards required by this deed.

- (b) **(Notification):** TQ Operations must obtain the State's approval of the Relevant Entity and the terms and conditions of its appointment, which must be on

commercial terms negotiated on an arm's length basis having regard to the obligations of TQ Operations under this deed.

- (c) **(Restrictions):** Subject to clause 19.12, TQ Operations must not:
- (i) terminate the appointment of any Relevant Entity unless another person, in respect of which clause 19.11(a) has been complied with, is appointed to perform the obligations which were performed by that Relevant Entity; or
  - (ii) make, or consent to, any modification, variation or amendment of a material nature to the O&M Contract or to any other agreement under which a Relevant Entity is appointed, unless such modification, variation or amendment is on commercial terms and has been negotiated on an arm's length basis and prior written details have been given to the State,
- unless the State otherwise consents in writing, which consent must not be unreasonably withheld or delayed.
- (d) **(Subcontracting not to limit TQ Operations' obligations):** The engagement by TQ Operations of the O&M Contractor or any Relevant Entity will not limit or affect TQ Operations' obligations or liability under this deed.
- (e) **(TQ Operations liable for subcontractor acts):** TQ Operations will be vicariously liable to the State for the acts and omissions of the O&M Contractor and any Relevant Entity and their respective Associates as if such acts or omissions were acts or omissions of TQ Operations (as the case may be).

## 19.12 Replacement of O&M Contractor

If, at any time, TQ Operations proposes to appoint a replacement O&M Contractor, TQ Operations must first obtain prior written consent from the State to the replacement O&M Contractor. The State must not withhold such consent where:

- (a) the State has been provided with written details of the proposed replacement O&M Contractor, and the terms and conditions on which the proposed replacement O&M Contractor is to be engaged;
- (b) the proposed replacement O&M Contractor is a reputable corporation;
- (c) in the State's reasonable opinion, the proposed replacement O&M Contractor (whether by itself or by way of support from its shareholders in a form acceptable to the State acting reasonably):
  - (i) has sufficient expertise and ability; and
  - (ii) is of sufficiently high financial and commercial standing,to properly carry out the obligations of the O&M Contractor under the relevant Project Documents;
- (d) the terms and conditions on which the proposed replacement O&M Contractor is to be engaged are reasonably acceptable to the State;
- (e) the proposed replacement O&M Contractor has agreed to be bound by the terms of the relevant Project Documents; and

- (f) a person other than the State bears all reasonable costs and expenses (including legal costs and expenses) of and incidental to:
  - (i) any enquiries which the State may make for the purposes of determining whether to consent to the replacement of the O&M Contractor;
  - (ii) the procurement of a replacement O&M Contractor; and
  - (iii) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

### 19.13 Notice of damage and accidents

- (a) **(Reports):** During the O&M Phase, TQ Operations must promptly give the State a detailed written report of:
  - (i) any material damage to or Defect or disrepair in the Tollroad or any Maintained Non-Tollroad Works of which it is aware;
  - (ii) the action which TQ Operations proposes to take to correct that material 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 Tollroad or any Maintained Non-Tollroad Works of which it is aware.
- (b) **(Additional information):** If TQ Operations provides or is required to provide a report to the State in accordance with clause 19.13(a), TQ Operations must thereafter provide any additional information reasonably requested by the State in respect of the subject matter of such report.

### 19.14 Advertising signage

Subject to clause 12.5(b), a PPP Co must not at any time during the O&M Phase erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Tollroad or the Maintained Non-Tollroad Works (or permit any third party to do so). However:

- (a) this will not prevent a PPP Co from installing and maintaining:
  - (i) operational directional signage which is required by Annexure 1 to the Performance Specification (including in particular sections 5.4 and 6.10); and
  - (ii) advertising signage described in Schedule 13; and
- (b) each PPP Co acknowledges and agrees that:
  - (i) the PPP Cos must obtain all necessary Approvals in respect of such signage; and
  - (ii) the State has not made, and is under no obligation to make, any investigation with respect to the legality of such signage or to assist with any required Approval by the State (in its capacity as an Authority) or by any other Authority.

## 19.15 Key performance indicators

- (a) **(Objectives):** The objectives of the key performance indicators ("**KPIs**") set out in Schedule 17 are to measure the PPP Cos' performance under this deed. TQ Operations will set up a system to record and report on the PPP Cos' performance against the KPI Benchmarks ("**KPI Assessment System**").
- (b) **(Achievement of KPI Benchmark):**
- (i) TQ Operations must use its best endeavours to meet each of the KPI Benchmarks.
  - (ii) If, for any Financial Year, the total KPI Demerit Points exceeds zero (calculated as shown in Schedule 17), TQ Operations must apply the applicable KPI Credit as directed by the State in accordance with clause 19.15(f).
  - (iii) Some of the KPI Benchmarks reflect standards which the PPP Cos must meet elsewhere under this deed. The PPP Cos' obligation to achieve those standards is not affected by this clause 19.15 or by Schedule 17. The KPI Benchmark will be reviewed as set out in Schedule 17.
- (c) **(Requirements of KPI Assessment System):**
- (i) The KPI Assessment System set up by TQ Operations must be adequate to record:
    - A. whether the KPI Benchmarks are met or not;
    - B. each occasion where a KPI Benchmark is not met, identifying them separately, and also identifying the remedy steps taken;
    - C. TQ Operations' performance of each KPI in each assessment period stated in Schedule 17, including the actual performance standard achieved for each KPI the amount of all KPI Demerit Points incurred and any other information that the State reasonably requires in relation to the KPIs; and
    - D. all source information relevant to TQ Operations' performance in relation to KPIs (including any data contemplated by Schedule 17),(collectively, the "**KPI Data**").
  - (ii) TQ Operations must give to the State a quarterly KPI report, within 20 Business Days after the end of each Quarter, commencing from the Date of Tollroad Completion. This report must include the information required by Schedule 17. TQ Operations must certify that the report is accurate.
  - (iii) TQ Operations must keep a copy of all KPI Data for 7 years.
  - (iv) TQ Operations must ensure that the KPI Data is accurate.
- (d) **(Audit):**
- (i) If the State so requests, TQ Operations must provide to the State within 30 Business Days of the end of a Financial Year in the O&M Phase an

audit report, prepared by an independent and reputable auditor, who has audited the KPI Data and the quarterly KPI Reports for that Financial Year.

(ii) At any time up to 12 months after the end of the Concession Period, the State may give notice to TQ Operations requiring an audit of the KPI Data, the quarterly KPI Reports or the KPI Assessment System ("**KPI Audit Notice**") to verify their accuracy.

(iii) If the State gives a KPI Audit Notice under clause 19.15(d)(ii):

A. the State will appoint, and notify TQ Operations of, a person to conduct the audit ("**KPI Auditor**"), at the State's cost, on terms reasonably determined by the State;

B. the PPP Cos must, within a reasonable period, make the KPI Data, quarterly KPI Reports and the KPI Assessment System available for audit by the KPI Auditor and provide all necessary assistance to the KPI Auditor consistent with the requirements of this clause 19.15; and

C. the PPP Cos must provide such access to their senior management and directors and procure such access to TQ Operations' auditor appointed under clause 19.15(d)(i) as the KPI Auditor may reasonably require.

(iv) If the report of the KPI Auditor or the report prepared by the auditor under clause 19.15(d)(i) (each a "**KPI Auditor's Report**") states that the KPI Data or a quarterly KPI Report is not accurate, then TQ Operations must:

A. fix the inaccuracy, and reissue the relevant data or report to the State, or advise the State of any change to the KPI Assessment System; and

B. reassess any affected KPI, and pay the State any necessary adjustment to the KPI Credit.

(e) **(Acknowledgment):**

(i) The existence and implementation of the KPI Assessment System and any liability for a KPI Credit by TQ Operations does not limit or affect:

A. any of the obligations of the PPP Cos under this deed; or

B. any other rights of the State under this deed or otherwise.

(ii) The PPP Cos acknowledge and agree that:

A. the KPI Credits as calculated in accordance with Schedule 17 are a genuine pre-estimate of the detriment that the State will incur if the KPI Benchmarks are not achieved;

B. both the State and the PPP Cos require a formula of calculation of losses, costs, expenses and detriments which the State may incur should a PPP Co fail to discharge its

obligations under this deed, that is able to be readily applied without unnecessary administrative costs, delay or difficulty;

- C. it is in the economic and best interests of both the State and the PPP Cos that a formula of the nature referred to in clause 19.15(e)(ii)B be adopted;
- D. there are many and varied matters which form part of the losses, costs, expenses and detriments which the State may incur as a result of a failure by a PPP Co to discharge its performance obligations under this deed, many of which are either difficult, or in some cases impossible, to calculate with precision;
- E. the formula adopted in this deed and set out in Schedule 17, Part A meets the requirements set out in clauses 19.15(e)(ii)B, 19.15(e)(ii)C and 19.15(e)(ii)D; and
- F. the PPP Cos:
  - 1) are contracting with the State at arm's length;
  - 2) possess equivalent bargaining power to the State;
  - 3) possess extensive commercial experience and expertise;
  - 4) have had access to and been advised by their legal, accounting, technical, financial, economic, commercial and other professionals and experts in relation to their rights and obligations under this deed;
  - 5) warrant that the advice received by them is that clause 19.15 is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;
  - 6) enter into this deed without any duress, coercion, undue influence or other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the State;
  - 7) enter into this deed not dependent on or influenced by any statements or representations (whether express or implied) made by or on behalf of the State, other than those stated in this deed; and
  - 8) enter into this deed with the intention that clause 19.15 is legally binding, valid and enforceable in accordance with its terms.

- (iii) The PPP Cos agree to exclude and waive any right of the benefit of, to the extent permissible, the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of clause 19.15 or the characterisation of it as a penalty.

- (f) **(Application of KPI Credits):**
- (i) KPI Credits may be applied by the State towards funding:
    - A. Toll discounts for motorists using the Tollroad;
    - B. Toll-free periods for motorists using the Tollroad;
    - C. the crediting of amounts to Customers' accounts in relation to their use of the Tollroad;
    - D. community infrastructure; or
    - E. such other purposes as the State may determine, provided that the value of any such initiative shall not exceed the accrued KPI Credits to date.
  - (ii) If the State decides that any KPI Credits shall be used to fund the payment of amounts to Customers' accounts, the State may advise TQ Operations of the basis upon which the State requires the payments to be calculated.
  - (iii) Within 14 days after being given this information, TQ Operations will give to the State, in writing:
    - A. full details of the amount payable to each Customer;
    - B. a copy of the explanatory statement that TQ Operations proposes to provide to the Customers; and
    - C. details of the procedures that TQ Operations intends to follow in order to pay that credit.
  - (iv) TQ Operations shall make those payments within 7 days (or by such later date as the State may direct) after the State has approved the payment calculations, and other information provided to the State under clause 19.15(f)(iii).
  - (v) Unless the State otherwise directs, all credits shall be paid to the account that each Customer uses to pay Tolls and other amounts due to the PPP Cos.
- (g) **(Interpretation):** Unless the context otherwise requires, words and expressions used in this clause 19.15 have the meanings given to them in Schedule 17.

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## 20. Tolling and Customer service

### 20.1 Levying of Tolls

- (a) **(Right to levy Tolls):** TQ Operations may levy Tolls for the use of the Tollroad (or any part of the Tollroad) for the passage of motor vehicles in accordance with this deed, the Toll Calculation Schedule and the Tolling Declaration.
- (b) **(Right to levy User Charges):** TQ Operations may impose a User Charge in connection with:

- (i) the use of or entitlement to use, the Tollroad (or any part of the Tollroad) or any other tollroad; or
- (ii) the provision of services (including account set up, top-up amounts and minimum usage amounts for Nominated Tolling Products) in connection with the use of, or an entitlement to use, the Tollroad (or any part of the Tollroad) or any other tollroad,

in accordance with this deed, the Toll Calculation Schedule and the Tolling Declaration.

- (c) **(Right to levy Administration Charges):** TQ Operations may impose Administration Charges in connection with the Tollroad in accordance with this deed, the Toll Calculation Schedule and the Tolling Declaration.
- (d) **(Tolling System):** TQ Operations may only levy Tolls by means of the Tolling System.

## 20.2 Commencement of Tolling

- (a) **(Date of Tolling System Completion):** Subject to clauses 20.2(b) and 20.2(c), TQ Operations may only commence levying Tolls, User Charges and Administration Charges with respect to the Tollroad on or after the Date of Tolling System Completion.
- (b) **(Deposits and prepayments):** Prior to the Date of Tolling System Completion, TQ Operations may collect deposits and prepayments from Customers in connection with the issue of Nominated Tolling Products, provided that TQ Operations deposits all such deposits and prepayments into a trust account:
  - (i) established in accordance with the Customer Service Rollout Program; and
  - (ii) otherwise satisfactory to the State (acting reasonably).
- (c) **(Toll free period):** TQ Operations must not levy Tolls, User Charges or Administration Charges with respect to the Tollroad for a continuous period of 4 weeks commencing on the Date of Tolling System Completion.

## 20.3 Sources of revenue and returns

- (a) **(TQ Operations):** TQ Operations may only derive revenue or other returns from:
  - (i) Tolls levied, and User Charges and Administration Charges imposed or charged in accordance with this deed;
  - (ii) payments received under Interoperability Agreements relating to the use of the Tollroad;
  - (iii) to the extent considered revenue, amounts collected from TQ Operations' Customers for use of another tollroad in accordance with clause 20.6(e)(ii);
  - (iv) interest or other returns on monies held by or on behalf of TQ Operations;

- (v) sale or development of land that is provided by the State on a freehold basis; and
  - (vi) any other revenue or return approved by the State from activities approved by the State or permitted under this deed.
- (b) **(Associates):** The PPP Cos must ensure that after the date of this deed, none of their Associates derive revenue or other returns in connection with the Projects other than revenue or returns derived:
- (i) directly or indirectly from payments made by a PPP Co; or
  - (ii) under arm's length commercial arrangements approved by the State.

## 20.4 No other fees and charges

TQ Operations must ensure that no Toll, User Charge, Administration Charge or other amount is levied, charged or imposed on, or required to be paid, advanced or deposited by any person in connection with the use of or an entitlement to use the Tollroad (or any part of the Tollroad) or otherwise in connection with the Tollroad other than:

- (a) on Customers of TQ Operations and other users of the Tollroad, Tolls levied, User Charges charged and Administration Charges imposed in accordance with the Toll Calculation Schedule and the Tolling Declaration; or
- (b) on third parties with whom TQ Operations has an Interoperability Agreement with, amounts equivalent to, and not exceeding the amounts of, such Tolls, User Charges or Administration Charges which are recoverable under any Interoperability Agreements with respect to the use of the Tollroad (or any part of the Tollroad).

## 20.5 Tolling System

TQ Operations must ensure that the Tolling System:

- (a) complies with the requirements and specifications set out in the Performance Specification; and
- (b) is readily capable of being Tag Interoperable and Pass Interoperable with toll systems used on other tollroads.

## 20.6 Interoperability

- (a) **(Tag interoperability):** TQ Operations must use all reasonable endeavours to enter into an agreement with each Tollroad Service Provider for each other Australian tollroad from time to time and the operator of each other Australian tollroad (as necessary), so that the Tolling System operates as a Tag Interoperable system which is approved by the State.
- (b) **(Pass interoperability):** TQ Operations must use all reasonable endeavours to enter into an agreement with each Tollroad Service Provider that offers a non-Tag tolling service and is willing to enter into such an agreement, so that the Tolling System operates as a Pass Interoperable system (for those Tollroad Service Providers and tollroads) which is approved by the State.
- (c) **(State approval):** The State must approve an Interoperability Agreement if it is on substantially the same terms as the interoperability agreements for other Australian tollroads, or is otherwise efficient, reasonable and effective from the perspective of

Customers of TQ Operations and the other Tollroad Service Provider and users of the Tollroad and the other Australian tollroads.

- (d) **(Information):** TQ Operations must give the State:
- (i) as soon as practicable after the Interoperability Agreement is made or varied, a copy of each Interoperability Agreement concerning the Tollroad; and
  - (ii) by the day that is 20 Business Days after the end of each 6 month period from the date of Financial Close, details of the status of negotiations concerning Interoperability Agreements and, to the extent that Interoperability Agreements have been entered into, a report summarising in such detail as the State may reasonably require, the interoperable transactions involving the Tollroad and any other relevant tollroad.
- (e) **(Interoperability fees):** To the maximum extent permitted by law:
- (i) TQ Operations must not recover or permit any Tollroad Service Provider under an Interoperability Agreement to recover a Toll, or User Charge or Administration Charge for the use of the Tollroad (or part of the Tollroad) by an Interoperable User under an Interoperability Agreement which is greater than the Toll and any applicable User Charge or Administration Charge which TQ Operations would be entitled to levy, charge or impose on account of the relevant Trip if that Interoperable User had been a Customer of TQ Operations and was using a tolling product of TQ Operations which is the nearest equivalent to the tolling product of the other Tollroad Service Provider actually used by that Interoperable User;
  - (ii) if the Customer Contract to which a Customer is a party entitles a vehicle to use another Australian tollroad that is subject to an Interoperability Agreement, TQ Operations may recover an amount from that Customer for use of that tollroad by that vehicle. That amount must not exceed the amount which the Tollroad Service Provider for that tollroad would be entitled to charge the Customer for that use of the tollroad (as if that Customer was a Customer of that Tollroad Service Provider). TQ Operations may retain from such amount for itself any administrative fee set out in the Interoperability Agreement relating to that tollroad but must remit the remainder of that amount to the Tollroad Service Provider that is a party to the Interoperability Agreement; and
  - (iii) TQ Operations must use its best endeavours to ensure that each other Tollroad Service Provider does not charge TQ Operations an amount which exceeds the tolls or fees that the Tollroad Service Provider is entitled to levy, charge or impose on its Customers (and, for the avoidance of doubt, not the amount it is entitled to charge unregistered or uncontracted casual users of that other tollroad) in respect of only that trip on the tollroad.

## 20.7 Customer Service Roll Out Program

- (a) **(Submission of program):** By no later than 12 months before TQ Operations reasonably anticipates achieving Tollroad Completion, TQ Operations must submit to the State and the Independent Verifier a detailed program that complies with clause 20.7(b).

- (b) **(Requirements for Customer Service Roll Out Program):** The Customer Service Roll Out Program must show or attach:
- (i) all major activities which are required to commence Tolling, as described in this clause 20;
  - (ii) the estimated duration of each such activity and the key relationships between such activities;
  - (iii) plans to ensure the provision and adequate testing of systems to ensure accurate Tolling, accounting and billing;
  - (iv) plans to ensure the provision of Customer Services both from the Date of Tolling System Completion and, to the extent necessary, before that date;
  - (v) details of resourcing and training strategies;
  - (vi) procedures for the establishment of Customer accounts and entering into arrangements with Customers with respect to Tolling and User Charges;
  - (vii) particulars of the system to be established under clause 20.13;
  - (viii) proposals for the distribution of any products required to enable efficient Tolling and use of the Tollroad from the perspective of users of the Tollroad, taking into account reasonably anticipated demand;
  - (ix) a program for publicity and dissemination of information to ensure Tolling commences in an efficient manner from the perspective of users of the Tollroad;
  - (x) a program for the efficient and effective addressing of queries concerning Tolling including providing an appropriate number, and availability, of communication channels;
  - (xi) a program to ensure that privacy requirements are adhered to;
  - (xii) any other matters which may have a material bearing on the commencement of Tolling;
  - (xiii) a program to ensure that no Customer is prejudiced by a delay in achieving Tollroad Completion in circumstances where TQ Operations has received, prior to Tollroad Completion, a deposit or prepayment from that Customer; and
  - (xiv) where applicable, evidence of the existence of a trust account in which any deposits or prepayments that are received from Customers prior to the Date of Tolling System Completion are deposited.

## 20.8 Customer Service Roll Out

- (a) **(Review by Independent Verifier):** The Independent Verifier must review TQ Operations proposed Customer Service Roll Out Program so that the Independent Verifier may form an opinion as to whether or not compliance with the Customer Service Roll Out Program is likely to result in TQ Operations being able to comply with its obligations to provide Customer Services and address Customer Complaints as required under this deed, with respect to the Tollroad from Tollroad Completion.

- (b) **(Notice of non-compliance):** If the Independent Verifier believes that the proposed Customer Service Roll Out Program is not likely to result in TQ Operations being able to comply with its obligations to provide Customer Services and address Customer Complaints as required under this deed with respect to the Tollroad from Tollroad Completion, the Independent Verifier may give notice to TQ Operations and the State of that opinion and the reasons for that opinion. TQ Operations must then, as soon as practicable, revise the Customer Service Roll Out Program so that it addresses the Independent Verifier's concerns and resubmit the program to the State and the Independent Verifier for review by the Independent Verifier in accordance with clause 20.8(a). TQ Operations may refer any dispute concerning the Independent Verifier's opinion for resolution in accordance with clause 44.
- (c) **(Compliance):** As a condition of Tolling System Completion but subject to clause 20.9, TQ Operations must comply in all material respects with the Customer Service Roll Out Program to the extent that it contemplates compliance before Tolling System Completion.

## 20.9 Amendment to Customer Service Roll Out Program

- (a) **(Departure):** Provided that TQ Operations has complied with clauses 20.9(b) and 20.9(c), TQ Operations may depart from the Customer Service Roll Out Program for reasonable cause with the approval of the State, acting reasonably (but this clause 20.9(a) does not affect TQ Operations' obligations or the State's rights under any provision of this deed).
- (b) **(Notice of departure):** TQ Operations must give notice to the State and the Independent Verifier in a timely manner of any proposed or likely material departure from the Customer Service Roll Out Program.
- (c) **(Updated Customer Service Roll Out Program):** A notice under clause 20.9(b) must include an updated Customer Service Roll Out Program incorporating all or any changes in activities, methods, times or sequence of activities and TQ Operations planned progress towards commencement of Tolling of the Tollroad, with the same level of detail as for the original Customer Service Roll Out Program. The updated Customer Service Roll Out Program must be provided for review in accordance with clause 20.8(a) as if it were the initial Customer Service Roll Out Program submitted to the State and the Independent Verifier.

## 20.10 Customer Services

TQ Operations, in interacting with Customers, potential Customers, users and potential users of the Tollroad, must provide customer services to a standard that, at a minimum, is consistent with the standard to which customer services are performed by other Tollroad Service Providers and in accordance with the Customer Service Practice Requirements including:

- (a) complying with the customer service requirements of the Performance Specification;
- (b) providing traffic information services and systems to users of the Tollroad;
- (c) providing traffic incident management (including vehicle breakdown services);
- (d) providing readily accessible, efficient and accurate account management services and systems;
- (e) marketing and providing information on the Tollroad and Tolling (including offering appropriate tolling products to different market segments) through

appropriately available and sufficient communications channels (which, among other things, meet the communications needs of different ethnic groups and disadvantaged groups);

- (f) establishing and operating an Interoperable system;
- (g) ensuring that appropriate tolling products and arrangements are made available to users and prospective users of the Tollroad, having regard to:
  - (i) advancements in technology;
  - (ii) operation and maintenance practices as required by O&M Best Practices;
  - (iii) the most appropriate and efficient means of Tolling, from the perspective of Customers and users of the Tollroad; and
  - (iv) without limiting clauses 20.10(g)(i), 20.10(g)(ii) and 20.10(g)(iii), the means of Tolling offered by other Tollroad Service Providers;
- (h) ensuring that there is no restriction or qualification imposed on persons to whom products required for Tolling are distributed or on the use of those products;
- (i) ensuring that each potential Customer is made aware of the relative merits of each Nominated Tolling Product and the Customer Contract for the different Nominated Tolling Products;
- (j) promptly repaying any amounts incorrectly charged; and
- (k) ensuring that sufficient numbers of adequately trained staff are available to deliver customer services,

("Customer Services").

## 20.11 Tolling Products

- (a) **(Nominated Tolling Products):** Unless otherwise agreed by the State, TQ Operations must make available each Nominated Tolling Product:
  - (i) pursuant to a Customer Contract for that Nominated Tolling Product approved by the State in accordance with clause 20.12(c); and
  - (ii) to all users or potential users of the Tollroad.
- (b) **(Tolling Product Amendment):**
  - (i) TQ Operations must not:
    - A. suspend, delete or discontinue any Nominated Tolling Product; or
    - B. provide any arrangement or tolling product in connection with the use of, or entitlement to use the Tollroad other than a Nominated Tolling Product,

(each a "**Tolling Product Amendment**"), without obtaining the prior consent of the State.

- (ii) If TQ Operations desires a Tolling Product Amendment, it must submit a notice to the State:
  - A. setting out the details of the proposed Tolling Product Amendment;
  - B. in the case of a proposed new arrangement or tolling product, attaching the proposed Customer Contract that will apply to that arrangement or tolling product; and
  - C. seeking the State's consent to:
    - 1) the proposed Tolling Product Amendment;
    - 2) any changes necessary to the Toll Calculation Schedule and the Tolling Declaration to reflect that Tolling Product Amendment; and
    - 3) in the case of a proposed new tolling product or arrangement, the proposed Customer Contract for that tolling product or arrangement.
  
- (iii) The State must not unreasonably withhold its consent to a Tolling Product Amendment if that Tolling Product Amendment:
  - A. in the case of a proposed new arrangement or tolling product, is required as a consequence of a change in technology pursuant to clause 20.10(g);
  - B. in the case of a proposed deletion or discontinuance of a Nominated Tolling Product, that Nominated Tolling Product is to be replaced by a proposed new arrangement or tolling product to reflect a change in the Tolling System in accordance with clause 20.11(b)(ii); or
  - C. in any case in the State's opinion (acting reasonably):
    - 1) is not detrimental to the State, users of the Tollroad, TQ Operations' Customers or other members of the public generally; and
    - 2) is consistent with TQ Operations' Customer Service obligations.
  
- (iv) The State must advise TQ Operations within 20 Business Days (or such longer period as the State reasonably requests given the nature of the Tolling Product Amendment) of receiving TQ Operations' notice under clause 20.11(b)(ii), that:
  - A. it consents to the Tolling Product Amendment and, if applicable, the proposed Customer Contract;
  - B. either or both of the Tolling Product Amendment and, if applicable, the proposed Customer Contract, is unacceptable to it and the reasons why the Tolling Product Amendment or the proposed Customer Contract is unacceptable; or

- C. it requires further information from TQ Operations regarding the Tolling Product Amendment. If so, the State must respond in terms of clauses 20.11(b)(iv)A or B within 20 Business Days of receiving that additional information from TQ Operations.

## 20.12 Customer Contracts

- (a) **(Terms of Customer Contract):** TQ Operations must, in respect of each Nominated Tolling Product:
  - (i) offer a contract, which:
    - A. imposes User Charges in respect of that Nominated Tolling Product that are no greater than the User Charges provided for in Schedule 4 of the RFA in respect of that Nominated Tolling Product;
    - B. provides for the payment or deposit (as applicable) of those User Charges by a Customer and the application and, if applicable, refund of those User Charges in circumstances and on terms consistent with the provisions in respect of that Nominated Tolling Product specified in Schedule 4 of the RFA;
    - C. provides for each Product Feature applicable to that Nominated Tolling Product;
    - D. complies with the requirements of clause 20.12(b); and
    - E. subject to clause 20.12(c), is in a form and substance approved by the State,  
  
(in each case a "**Customer Contract**");
  - (ii) ensure that each user of the Tollroad or prospective user of the Tollroad is advised in clear terms that the Customer Contract is available for them to accept;
  - (iii) make the terms and conditions attaching to a Customer Contract available to all Customers or prospective Customers of TQ Operations; and
  - (iv) provide written confirmation to a Customer of the Product Features and User Charges applicable to that Nominated Tolling Product and the arrangements for use of the Tollroad (including the name of the Customer, details of the vehicles to which the arrangements relate (including the category of vehicle and the vehicle's licence plate number), the period of time covered by that arrangement, and details of the payment term and means of payment):
    - A. at the time the Customer enters into a Customer Contract for that Nominated Tolling Product; and
    - B. in the most expedient manner, having regard to the means by which the Customer makes that arrangement for the use of the Tollroad.

- (b) **(Requirements for Customer Contracts):** TQ Operations must ensure that any written contract and any terms and conditions with its Customers for use of the Tollroad, the provision of services connected with the Tollroad, or Tolling or otherwise charging in relation to the Tollroad:
- (i) use simple, concise and plain language;
  - (ii) are appropriate for the class or market segment to which the Customer belongs;
  - (iii) are fair and reasonable;
  - (iv) provide for reasonable notice of failure to pay, suspension and termination consistent with the terms on which other services in other industry sectors are typically provided to the general public at large but having appropriate regard to the nature of other electronically tolled Tollroads and, in any event, provide for reminders to be issued with reasonable notice periods prior to suspension or termination;
  - (v) provide for prompt repayment of any amounts incorrectly charged;
  - (vi) indicate the availability of the system established under clause 20.13 for receiving and addressing Customer Complaints and ensure that complaints and disputes are addressed in accordance with that system;
  - (vii) state clearly and with sufficient certainty the rights and responsibilities of the Customer and TQ Operations;
  - (viii) do not attempt to exclude any statutory consumer protection;
  - (ix) advise Customers of TQ Operations' policy and obligations in respect of privacy; and
  - (x) are readily available to users and potential users of the Tollroad to ensure that they can make informed choices about use of the Tollroad and the cost of using the Tollroad.

(c) **(Approval of Customer Contracts):**

- (i) By no later than 120 Business Days before the PPP Cos reasonably anticipate achieving Tollroad Completion, TQ Operations must submit to the State for its approval the proposed Customer Contract for each Nominated Tolling Product.
- (ii) The State must not unreasonably withhold its consent to the proposed Customer Contract for a Nominated Tolling Product if the proposed Customer Contract complies with the requirements of clause 20.12(a)(i) (other than the requirement of clause 20.12(a)(i)E).
- (iii) The State must make a decision as to whether or not it will approve a proposed Customer Contract in respect of a Nominated Tolling Product and advise TQ Operations within 30 Business Days (or such longer period as the State reasonably requests) of receiving the proposed Customer Contract under clause 20.12(c)(i), that:
  - A. it approves the proposed Customer Contract;

- B. the proposed Customer Contract is unacceptable to it and the reasons why the proposed Customer Contract is unacceptable; or
  - C. it requires amendments to the proposed Customer Contract together with details of the proposed amendments. If so, TQ Operations must, by notice to the State, confirm whether it agrees to those proposed amendments.
- (d) **(Customer Contract Amendment):**
- (i) TQ Operations must ensure that there is no modification, variation, amendment or replacement of any Customer Contract ("**Customer Contract Amendment**") without obtaining the prior consent of the State.
  - (ii) If TQ Operations desires a Customer Contract Amendment, it must submit a notice to the State setting out the details of the proposed Customer Contract Amendment.
  - (iii) The State must not unreasonably withhold its consent to a Customer Contract Amendment if in the State's opinion (acting reasonably) that Customer Contract Amendment:
    - A. is consistent with TQ Operations' Customer Service obligations under this deed; and
    - B. is not to the detriment of the State, users of the Tollroad or other members of the public generally.
  - (iv) The State must make a decision as to whether or not it will consent to the proposed Customer Contract Amendment and advise TQ Operations within 20 Business Days (or such longer period as the State reasonably requests given the nature of the Customer Contract Amendment) of receiving TQ Operations' notice under clause 20.12(d)(ii), that:
    - A. it consents to the Customer Contract Amendment;
    - B. the Customer Contract Amendment is unacceptable to it and the reasons why the Customer Contract Amendment is unacceptable; or
    - C. it requires further information from TQ Operations regarding the Customer Contract Amendment. If so, the State must respond in terms of clause 20.12(d)(iv)A or B within 20 Business Days of receipt by the State of that additional information from TQ Operations.

## 20.13 Dealing with Customer Complaints

TQ Operations must establish and maintain a system for receiving and addressing complaints of TQ Operations' Customers and users of the Tollroad (including Interoperable Users) ("**Customer Complaints**") which:

- (a) is readily accessible at no cost;

- (b) is easy to use (including meeting the needs of disadvantaged groups and the needs of people with disabilities);
- (c) is well promoted so that TQ Operations' Customers and users of the Tollroad (including Interoperable Users) are aware of its existence;
- (d) operates efficiently by dealing with complaints in a timely manner using appropriate processes and forums and by regularly reviewing its performance;
- (e) produces and is seen to produce fair outcomes by:
  - (i) observing principles of procedural fairness;
  - (ii) producing outcomes based on the information before it; and
  - (iii) making decisions and arriving at outcomes using specific criteria;
- (f) remains accountable for its operations by making its determinations and information about complaints publicly available;
- (g) has appropriate and comprehensive terms of reference which are regularly reviewed to achieve best practices;
- (h) is subject to periodic independent reviews of its performance by the Customer Service Auditor; and
- (i) provides for an independent decision making process which complies with the requirement of paragraphs (a) to (h) where an outcome satisfactory to the parties involved cannot be agreed in respect of a complaint.

## **20.14 Customer Services and Customer Complaints reports**

On the day that is 20 Business Days after each successive 3 month period starting with the Date of Tollroad Completion, TQ Operations must provide the State with a report (copied to the members of the Senior Project Group) signed by an authorised representative of TQ Operations detailing the provision by it of Customer Services and the Customer Complaints received by it in that 3 month period and its compliance with clause 20.10, in such form as the State may reasonably require (as may be amended by the State from time to time as reasonably required to ensure that the State has accurate and comprehensive information concerning the manner and the standards to which Customer Services are being provided and the Customer Complaints are being resolved).

## **20.15 Customer Service Audit**

- (a) **(Annual audit):**
  - (i) TQ Operations will be subject to an annual audit to determine whether TQ Operations is providing Customer Services and Customer Complaints resolution to the level required by clauses 20.10 and 20.13 and in accordance with the requirements of the Performance Specification ("**Customer Service Audit**").
  - (ii) TQ Operations must fully and promptly co-operate with the Customer Service Auditor to allow the Customer Service Auditor to carry out the Customer Service Audit in the manner it considers necessary.
- (b) **(Customer Service Auditor):**

- (i) Subject to clause 20.15(b)(iii), the State and TQ Operations must appoint an independent auditor to conduct the Customer Service Audit ("**Customer Service Auditor**") for the previous 12 months within 10 Business Days of the Date of Tollroad Completion. If the parties have not agreed on the person who should be the Customer Service Auditor by the date for appointment of the Customer Service Auditor, then the parties must appoint the Queensland Auditor General to be the Customer Service Auditor.
  - (ii) The Customer Service Auditor may conduct the Customer Service Audit as he or she considers necessary to determine whether TQ Operations is meeting the required level of Customer Services and Customer Complaints resolution in accordance with clauses 20.10 and 20.13 and the Performance Specification.
  - (iii) If the Independent Verifier's appointment has not ended when a Customer Service Audit is to be carried out, the State and TQ Operations must appoint the Independent Verifier to be the Customer Service Auditor.
- (c) **(Customer Service audit report):** After having conducted the Customer Service Audit, the Customer Service Auditor must provide a report of the audit to the State and TQ Operations that:
- (i) may include any information he or she thinks desirable in relation to matters that are the subject of the audit;
  - (ii) must set out the reasons for opinions expressed in the report; and
  - (iii) may include any recommendations arising out of the audit that he or she thinks fit to make.

The State may (but is not obliged to) publicly disclose the report.

- (d) **(Customer Service audit budget):**
- (i) The State must give TQ Operations at least 60 days notice of the date on which the State proposes that the Customer Service Auditor commences his or her annual audit and the State and TQ Operations, both acting reasonably and using their respective reasonable endeavours, must seek to agree a budget or other fee arrangement which is accepted by the Customer Service Auditor for the scope of work set out in clause 20.15(b)(ii) in respect of each Customer Service Audit.
  - (ii) If the budget or other fee arrangement is not agreed in accordance with clause 20.15(d)(i):
    - A. by the date for appointment of the Customer Service Auditor under clause 20.15(b)(i), the State may instruct the Customer Service Auditor to commence the Customer Service Audit; and
    - B. within 20 Business Days of the date which the State has proposed as the date by which the Customer Service Auditor must commence his or her annual audit, either the State or TQ Operations may refer the dispute regarding the budget or other fee arrangement for dispute resolution under clause 44.

- (e) **(Costs and expenses of Customer Service Auditor):** The reasonable costs and expenses (including professional fees) of the Customer Service Auditor will be paid to the Customer Service Auditor by the State in accordance with the budget or the fee arrangement agreed under clause 20.15(d) or determined in accordance with clause 44. TQ Operations must pay the State on demand, from time to time, 50% of all such costs and expenses paid by the State.
- (f) **(Information and access):** The State and TQ Operations must provide such information and documentation, and access to, and explanation of, systems, records and procedures manuals, wherever located, to the Customer Service Auditor as may be reasonably required by the Customer Service Auditor for the purpose of performing his or her functions under this deed. TQ Operations must provide such access to its directors as the Customer Service Auditor may reasonably require.

## 20.16 Preferred Tollroad Service Provider

- (a) The PPP Cos must not appoint a Preferred Tollroad Service Provider (other than TQ Operations) without obtaining the prior consent of the State to the identity and the terms and conditions of its appointment.
- (b) If the PPP Cos desire to appoint a Preferred Tollroad Service Provider (other than TQ Operations), TQ Operations must submit a notice to the State:
  - (i) setting out the proposed identity and terms and conditions of appointment of the Preferred Tollroad Service Provider; and
  - (ii) seeking the State's consent to appoint the Preferred Tollroad Service Provider.
- (c) The State must not unreasonably withhold its consent to the appointment of a Preferred Tollroad Service Provider if:
  - (i) the proposed Preferred Tollroad Service Provider:
    - A. is reputable and has sufficient experience and expertise in successfully providing tolling services;
    - B. has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this deed; and
    - C. is of sufficiently high financial and commercial standing to perform its obligations to the standards required by this deed; and
  - (ii) the terms and conditions of appointment:
    - A. are on commercial terms negotiated on an arm's length basis; and
    - B. require the Preferred Tollroad Service Provider to comply with the requirements of this clause 20 as though it was TQ Operations.
- (d) The State must make a decision as to whether or not it will approve a proposed Preferred Tollroad Service Provider and terms and conditions of appointment, and

advise TQ Operations within 30 Business Days (or such longer period as the State reasonably requests) of receiving the notice under clause 20.16(b), that:

- (i) it approves the proposed Preferred Tollroad Service Provider and terms and conditions of appointment;
  - (ii) the proposed Preferred Tollroad Service Provider or terms and conditions of appointment are unacceptable to it and the reasons why; or
  - (iii) it requires amendments to the terms and conditions of appointment. If so, TQ Operations must, by notice to the State, confirm whether it agrees to those proposed amendments.
- (e) TQ Operations must procure that any Preferred Tollroad Service Provider complies with the PPP Cos' obligations under this clause 20 as if it was TQ Operations and the obligations under this clause 20 will be met by the PPP Cos to the extent that the obligations are met by the Preferred Tollroad Service Provider.
- (f) The parties agree that each agreement setting out the terms and conditions of appointment of a Preferred Tollroad Service Provider shall be a "Project Document" for the purposes of this deed.

## **20.17 Tollroad Systems Supplier**

- (a) The PPP Cos must not, and must procure that the D&C Contractor does not, appoint a Tollroad Systems Supplier without obtaining the prior consent of the State to the identity and the terms and conditions of its appointment.
- (b) If either the PPP Cos or the D&C Contractor, or both, (as applicable) desire to appoint a Tollroad Systems Supplier, the PPP Cos must submit a notice to the State:
- (i) setting out the proposed identity and terms and conditions of appointment of the Tollroad Systems Supplier; and
  - (ii) seeking the State's consent to appoint the Tollroad Systems Supplier.
- (c) The State must not unreasonably withhold its consent to the appointment of a Tollroad Systems Supplier if:
- (i) the proposed Tollroad Systems Supplier:
    - A. is reputable and has sufficient experience and expertise in successfully delivering tollroad systems;
    - B. has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this deed; and
    - C. is of sufficiently high financial and commercial standing to perform its obligations to the standards required by this deed; and
  - (ii) the terms and conditions of appointment are:
    - A. on commercial terms negotiated on an arm's length basis; and
    - B. require the Tollroad Systems Supplier to comply with the requirements of this deed and/or the D&C Contract (as

applicable) as they relate to delivery of the Tollroad Systems (within the meaning given to that term under this deed and/or the D&C Contract, as applicable) as though it was the PPP Co and/or the D&C Contractor, as applicable.

- (d) The State must make a decision as to whether or not it will approve a proposed Tollroad Systems Supplier and terms and conditions of appointment, and advise the PPP Cos within 30 Business Days (or such longer period as the State reasonably requests) of receiving the notice under clause 20.17(b), that:
  - (i) it approves the proposed Tollroad Systems Supplier and terms and conditions of appointment;
  - (ii) the proposed Tollroad Systems Supplier or terms and conditions of appointment are unacceptable to it and the reasons why; or
  - (iii) it requires amendments to the terms and conditions of appointment. If so, the PPP Cos must, by notice to the State, confirm whether they (and/or the D&C Contractor, as applicable) agree to those proposed amendments.
- (e) The PPP Cos must procure that any Tollroad Systems Supplier complies with the PPP Cos' obligations under this deed, and/or the D&C Contractor's obligations under the D&C Contract (as applicable) as they relate to delivery of the Tollroad Systems (within the meaning given to that term under this deed and/or the D&C Contract, as applicable) as though it was the PPP Cos and/or the D&C Contractor (as applicable).
- (f) The parties agree that each agreement setting out the terms and conditions of appointment of a Tollroad Systems Supplier shall be a "Project Document" for the purposes of this deed.
- (g) The engagement of any Tollroad Systems Supplier to perform some or all of the obligations of the PPP Cos under this deed will not limit or affect either PPP Co's obligations or liability under this deed.
- (h) Each PPP Co will be vicariously liable to the State for the acts and omissions of any Tollroad Systems Supplier, its subcontractors and their respective Associates in performing the AL Project Activities as if such acts or omissions were the acts or omissions of a PPP Co.
- (i) The State and each PPP Co acknowledge and agree that the PPP Cos' obligations under this deed are not lessened or otherwise affected by the State's awareness of the terms and conditions of appointment of any Tollroad Systems Supplier.

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## 21. Interaction with transport network

### 21.1 No restrictions

- (a) **(No restriction on changes to transport network):** Nothing in the Project Documents will in any way restrict, or require the exercise of, any right or power of the State or the Council, directly or through any Authority, to develop, manage or change Queensland's transport network.
- (b) **(Examples):** Accordingly, and without limiting clause 21.1(a), the State, the Council and all other Authorities will be entitled on their own account, and to

authorise others to exercise, or not exercise, any right or power they would otherwise have had, to:

- (i) construct new tollroads, freeways and other roads;
  - (ii) extend, alter or upgrade existing tollroads, freeways and other roads;
  - (iii) connect new or existing tollroads, freeways and other roads to the Tollroad;
  - (iv) construct new public transport routes or services;
  - (v) extend, alter or upgrade existing public transport routes or services;
  - (vi) otherwise implement government transport policies; or
  - (vii) otherwise do anything which, subject to this deed, they are empowered to do by Law.
- (c) **(PPP Cos' risk):** Subject to clauses 21.3, 23.2, 26.1(a) and 26.1(b), each PPP Co acknowledges and agrees that it has no Claim against the State with respect to any consequence of the State exercising, or not exercising, any right or power of the type referred to in this clause 21.1.

## 21.2 Principal Traffic Connections

The parties acknowledge that the PPP Cos have prepared the Base Case Financial Model on the assumption that, subject to any closures which are necessary as a result of:

- (a) the occurrence of special events, including the transportation of visiting dignitaries;
- (b) the requirements of the State, any relevant Authority, road operator or emergency service provider including in relation to the safe and efficient management of traffic or as a consequence of planned or unplanned incident management (in each case whether in relation to the Tollroad or another part of the road and transport network);
- (c) the existence of a material threat to the health or safety of the public; or
- (d) upgrading, maintenance and/or repairs of a road or busway,

the Principal Traffic Connections specified in Schedule 7 will not be closed during the O&M Phase.

## 21.3 Proximate Work

- (a) **(The State may undertake Proximate Work):** Each PPP Co acknowledges and agrees that the State may do any one or more of the following (each a "**Proximate Work**") or permit the Council or another nominee to do so:
  - (i) construct, operate, maintain or repair any road or other means of vehicle, public transport, pedestrian or bicycle access (in whole or in part) under, on or above the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas;
  - (ii) construct, operate, maintain or repair any PUP or any other infrastructure or improvement (in whole or in part) under, on or above the Licensed

Construction Areas, the Leased Area or the Licensed Maintenance Areas;

- (iii) connect any road or other means of vehicle, public transport, pedestrian or bicycle access to the Tollroad or to any other structures located (in whole or in part) under, on or above the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas; and
  - (iv) connect any PUP or other infrastructure or improvement to the Tollroad or to any other structures located (in whole or in part) under, on or above the Licensed Construction Areas, the Leased Area or the Licensed Maintenance Areas.
- (b) **(Restrictions on Proximate Work):** Subject to the State's rights under clause 22, the State must not (and must not permit a nominee to):
- (i) carry out any Agreed PW pursuant to this clause 21.3 in a manner which would permanently prevent a PPP Co from undertaking the Projects;
  - (ii) prior to the Date of Tollroad Completion, carry out any Proximate Work, other than Agreed PW, pursuant to this clause 21.3, without the prior consent of the PPP Cos; or
  - (iii) after the Date of Tollroad Completion, carry out any Proximate Work, other than Agreed PW, pursuant to this clause 21.3 in a manner which would:
    - A. prevent a PPP Co from undertaking the AL Project substantially in accordance with this deed; or
    - B. impede the safe and free flow of traffic along, onto or from the Tollroad at its design speed and volume,  
  
without the prior consent of the relevant PPP Co, except to the extent that this is a consequence of work being carried out for or in connection with the Proximate Work and such work is either:
      - C. non-peak hour work, which may be periodic; or
      - D. occasional short term work.
- (c) **(State Notice):** If the State proposes to undertake a Proximate Work or permit a nominee to do so then:
- (i) the State must give the PPP Cos reasonable notice of its intention to do so; and
  - (ii) the PPP Cos must fully co-operate with the State and its Associates to enable the State or its Associates to undertake the Proximate Work.
- (d) **(Proximate Work):** If the State decides to undertake a Proximate Work (or permits a nominee to do so), then:
- (i) the PPP Cos must:
    - A. give the State and its Associates sufficient access to the Licensed Construction Areas, the Leased Area and the

Licensed Maintenance Areas to enable the State to plan, design, investigate or undertake the Proximate Work;

- B. fully co-operate with the State and its Associates to facilitate the implementation of the Proximate Work, including permitting reasonable temporary closures of lanes, or other parts, of the Tollroad and otherwise allowing the management of traffic on, entering or leaving the Tollroad to facilitate the State and its Associates managing traffic on or in the vicinity of the Tollroad;
  - C. carefully co-ordinate and interface the Project Activities with the activities associated with the Proximate Work; and
  - D. use its best endeavours to minimise any interference with, or disruption or delay to, the activities associated with the Proximate Work; and
- (ii) the State must:
- A. carefully co-ordinate and interface all activities associated with the Proximate Work with the Project Activities;
  - B. use its best endeavours to minimise any interference with, or disruption or delay to, the Project Activities;
  - C. ensure that its Associates comply with the requirements of this clause 21.3(d)(ii); and
  - D. use its best endeavours to ensure that the entity undertaking the Proximate Work has an obligation to fully co-operate with the PPP Cos and their Associates to facilitate the implementation of the Projects.
- (e) **(Maintenance responsibility):** If the State constructs any Proximate Work upon the Leased Area (or permits a nominee to), the State may at any time issue to the PPP Cos a "Modification Proposal" under clause 22, in relation to the maintenance and repair of that Proximate State Work. The procedures in that clause will then apply.
- (f) **(Tolling responsibility):** TQ Operations is responsible for temporarily or permanently augmenting the Tolling System so as to avoid any untolled use of the Tollroad during or after the undertaking of any Proximate Work.

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## 22. Modifications

### 22.1 Modifications proposed by the State

- (a) **(Modification Proposal):** The State may at any time issue to the PPP Cos a notice titled "Modification Proposal" setting out the details of a proposed Modification which the State is considering, including the State's proposed requirements for the implementation of the proposed Modification. The State will not be obliged to proceed with any Modification proposed in a "Modification Proposal".
- (b) **(Restriction):** Despite anything else in this clause 22.1, the State may not require the PPP Cos to implement a Modification to:

- (i) the Tollroad that will adversely affect the use, patronage or capacity of the Tollroad or TQ Operations' ability to levy Tolls; or
  - (ii) the EWAG Works, the EWAG Project Activities, the NB Works or the NB Project Activities after the Last DLP.
- (c) **(PPP Cos' Modification Notice):** As soon as practicable and in any event within 20 Business Days after receipt of a Modification Proposal, the PPP Cos must provide the State with a notice ("**PPP Cos' Modification Notice**") setting out detailed particulars of:
- (i) each PPP Co's estimate of the Modification Costs which it will incur, or the Modification Savings which it will derive, by carrying out the proposed Modification including:
    - A. a breakdown of the Modification Costs or Modification Savings relating to the AL Project; and
    - B. the adjustment (if any) to the NB Contract Price or the EWAG Contract Price resulting from that Modification Cost or Modification Saving to the extent that Modification Cost or Modification Saving (as appropriate) relates to the NB Project or the EWAG Project, and the consequential amendments to the NB Payment Schedule or the EWAG Payment Schedule;
  - (ii) the basis (if any) on which FinCo would be prepared to fund the whole or part of the Modification and the cost difference, if FinCo, rather than the State, funds the Modification;
  - (iii) the effects (if any) which the proposed Modification will have on the D&C Program;
  - (iv) if the Modification is proposed to be carried out after the Date of Close-Out, the time within which the proposed Modification will be implemented;
  - (v) the effects which the proposed Modification will have on:
    - A. the workmanship, durability or functional integrity of any element of the Project Works, the Tollroad, EWAG or the Northern Busway (Windsor to Kedron);
    - B. the use of the Tollroad, EWAG or the Northern Busway (Windsor to Kedron) by the general public for the safe, efficient and continuous passage of vehicles;
    - C. TQ Trustee's ability to handover the Tollroad in accordance with the requirements of this deed;
    - D. each PPP Co's and the NB Works Contractor's ability to handover the Northern Busway (Windsor to Kedron) and EWAG (other than BAC EWAG) in accordance with the requirements of this deed, the NB Works Deed and the EWAG Works Deed; or
    - E. each PPP Co's and/or the NB Works Contractor's ability to:

- 1) satisfy any warranty given by that PPP Co or the NB Works Contractor under this deed, the EWAG Works Deed and the NB Works Deed; or
  - 2) perform any of its other obligations under this deed, the EWAG Works Deed and the NB Works Deed;
- (vi) the Validity Period together with a detailed explanation of the circumstances if the Validity Period is less than 20 Business Days; and
- (vii) any other relevant information requested by the State.
- (d) **(PPP Cos' Modification Notice requirements):** The PPP Cos' Modification Notice must be prepared:
- (i) so as to avoid, as far as practicable, the need for a new Approval or a modification to an existing Approval for the implementation of the Modification;
  - (ii) on an open book basis with respect to each PPP Co's internal costs and the costs of the D&C Contractor, O&M Contractor and any Relevant Entity (and to this end each PPP Co must allow the State review and audit rights sufficient to verify that the PPP Cos' Modification Notice has been prepared in accordance with the requirements of this deed (including the definition of "Modification Costs"));
  - (iii) assuming each PPP Co is a willing, efficient and competent provider of the Modification in an efficient and competitive market;
  - (iv) in a manner which is consistent with the requirements of the State for the implementation of the Modification;
  - (v) having regard to minimising the disruption to:
    - A. users of the Tollroad, EWAG and the Northern Busway (Windsor to Kedron); and
    - B. the commissioning of EWAG and the Northern Busway (Windsor to Kedron) by the State;
  - (vi) having regard to minimising any delay in achieving NB Practical Completion, EWAG Practical Completion, Tollroad Completion, Tolling System Completion, NB Final Completion, EWAG Final Completion and Close-Out, to the extent that they have not yet been achieved;
  - (vii) having regard to minimising any adverse safety impacts of the Modification;
  - (viii) in a manner which ensures that all appropriate insurances relevant to the Modification are taken out and maintained consistently with those that would have been required by the State if the Modification had been included in the Project Works as applicable, as at the date of this deed unless the State otherwise determines; and
  - (ix) in a manner so that there is no double counting.
- (e) **(Tender for works):** If the State issues a "Modification Proposal" under clause 22.1(a) after the Date of Tolling System Completion, the State may require

that the relevant PPP Co conduct a tender process for all or part of the works which would be required to effect a Modification. The tender process must be conducted consistently with the principles of the State's procurement policies in their form as at the date the State gives the Modification Proposal under clause 22.1(a) (with the necessary changes to reflect that each PPP Co is a private company rather than an Authority). Each PPP Co must have regard to the outcome of that tender process (including the tender costs) in the PPP Cos' Modification Notice (or the PPP Cos' Modification Notice must be appropriately amended if that notice has already been provided).

- (f) **(Election by the State):** Within the Validity Period, the State must either:
- (i) advise the PPP Cos it:
    - A. requires further information and/or clarification with respect to PPP Cos' Modification Notice; and/or
    - B. has reduced the scope of the Modification Proposal;
  - (ii) accept PPP Cos' Modification Notice and if PPP Cos' Modification Notice contains any options, nominate which option the State accepts;
  - (iii) reject PPP Cos' Modification Notice; or
  - (iv) withdraw the proposed Modification,
- by notice to the PPP Cos (which in the case of clause 22.1(f)(ii) must be titled "Modification Order").
- (g) **(Further information/reduced scope):** If the State issues a notice in accordance with clause 22.1(f)(i), PPP Co must provide the State with an updated PPP Cos' Modification Notice addressing the issues raised by the State within 10 Business Days after receipt of the State's notice.
- (h) **(State accepts PPP Cos' Modification Notice):** If the State accepts PPP Cos' Modification Notice in accordance with clause 22.1(f)(ii):
- (i) the relevant PPP Co must proceed to implement (or procure the implementation by the NB Works Contractor of) the Modification on the basis of PPP Cos' Modification Notice (as accepted by the State); and
  - (ii) each PPP Co will be relieved of its obligations under this deed and the NB Works Contractor will be relieved of its obligations under the NB Works Deed and the EWAG Works Deed to the extent specified in PPP Cos' Modification Notice (as accepted by the State).
- (i) **(State rejects PPP Cos' Modification Notice):** If the State rejects PPP Cos' Modification Notice in accordance with clause 22.1(f)(iii), the State may require that:
- (i) the parties consult in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the PPP Cos' Modification Notice which are in dispute; and/or
  - (ii) if the Date of Tolling System Completion has occurred, the relevant PPP Co conduct a tender process (if it has not already done so) under clause 22.1(e).

- (j) **(If parties reach agreement):** If the parties reach agreement on the disputed matters in PPP Cos' Modification Notice and the State directs a PPP Co to proceed with the Modification (by notice titled "Modification Order"):
- (i) the relevant PPP Co must proceed to implement (or procure the implementation by the NB Works Contractor of) the Modification on the basis of PPP Cos' Modification Notice (as varied by the parties' agreement, as recorded in the "Modification Order", on the matters in PPP Cos' Modification Notice which were in dispute); and
  - (ii) each PPP Co will be relieved of its obligations under this deed and the NB Works Contractor will be relieved of its obligations under the NB Works Deed and the EWAG Works Deed to the extent specified in the PPP Cos' Modification Notice (as varied by the parties' agreement, as recorded in the "Modification Order", on the matters in PPP Cos' Modification Notice which were in dispute).
- (k) **(If parties fail to reach agreement):** If the parties are unable to reach agreement under clause 22.1(i) within 10 Business Days after the later of:
- (i) the commencement of the consultation; or
  - (ii) the outcome of the tender process is advised to the State (if applicable),
- the State may refer the matter for dispute resolution in accordance with clause 44. In resolving the dispute under clause 44, the parties will, and will direct the expert or arbitrator to:
- (iii) have regard to the principles set out in clause 22.1(d), to the extent relevant;
  - (iv) assume that funding for the Modification will be provided by the State, unless the parties otherwise agree; and
  - (v) determine all matters required to enable the Modification to be implemented.
- (l) **(State may direct the relevant PPP Co to proceed pending outcome of dispute resolution process):** If the State refers the matter for dispute resolution, the State may also direct the relevant PPP Co to proceed to implement (or procure the implementation by the NB Works Contractor of) the Modification by a notice titled "Modification Order" whether or not the matters in dispute have been agreed or determined in accordance with clause 44. If the State gives such a notice:
- (i) the disputed matters will, until the State and the relevant PPP Co otherwise agree or a determination is made in accordance with clause 44, be reasonably determined by the State. In making its determination, the State will:
    - A. have regard to the principles set out in clause 22.1(d), to the extent relevant;
    - B. assume that funding for the Modification will be provided by the State, unless the parties otherwise agree; and

- C. determine all disputed matters required to enable the Modification to be implemented, including the changes required to any Project Documents;
  - (ii) the relevant PPP Co must proceed to implement (or procure that the NB Works Contractor proceeds to implement) the Modification on the basis determined by the State, notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 44; and
  - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.
- (m) **(The State's options following resolution):** Following resolution of the dispute referred for dispute resolution under clause 22.1(k), the State may (unless it has already exercised its right under clause 22.1(l)) elect to do either of the following:
- (i) require the relevant PPP Co to proceed to implement (or procure that the NB Works Contractor proceeds to implement) the Modification in accordance with PPP Cos' Modification Notice as varied by the resolution; or
  - (ii) withdraw the proposed Modification,
- by notice to the relevant PPP Co (which in the case of clause 22.1(m)(i) must be titled "Modification Order").
- (n) **(PPP Co to implement Modification):** If the State gives a PPP Co notice pursuant to clause 22.1(m)(i), the relevant PPP Co:
- (i) must implement (or procure the implementation by the NB Works Contractor of) the Modification in accordance with PPP Cos' Modification Notice (as varied by the resolution, once made); and
  - (ii) will be relieved of its obligations under this deed and the NB Works Contractor will be relieved of its obligations under the NB Works Deed and the EWAG Works Deed to the extent specified in PPP Cos' Modification Notice (as varied by the resolution, once made).
- (o) **(The State may instruct):** Whether or not the State has issued a Modification Proposal under clause 22.1(a) and whether or not a PPP Co has issued a PPP Cos' Modification Notice in response to a Modification Proposal under clause 22.1(c), the State may at any time during the Concession Period (or in relation to the NB Project, at any time prior to NB Practical Completion or in relation to the EWAG Project, at any time prior to EWAG Practical Completion) instruct the PPP Cos to implement a Modification by issuing a notice titled "Modification Order". In these circumstances the matters set out in clauses 22.1(c)(i) and 22.1(c)(iii) will, until the State and the relevant PPP Co otherwise agree or a determination is made in accordance with clause 44, be reasonably determined by the State. In making its determination, the State will:
- (i) have regard to the principles set out in clause 22.1(d), to the extent relevant;
  - (ii) assume that funding for the Modification will be provided by the State, unless the parties otherwise agree; and

- (iii) determine all matters required to enable the Modification to be implemented.

If a PPP Co disagrees with a matter determined by the State under this clause 22.1(o):

- (iv) that PPP Co may refer the matter for dispute resolution in accordance with clause 44;
- (v) the relevant PPP Co must proceed to implement the Modification on the basis determined by the State notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 44; and
- (vi) any necessary adjustments will be made following the resolution of the matters in dispute.

(p) **(Payment and funding of Modification Costs/Savings):** If a PPP Co implements a Modification relating to the AL Project in accordance with:

- (i) **(Modification Cost, when agreed):** clauses 22.1(h) or 22.1(j) and PPP Cos' Modification Notice (as subsequently agreed, if clause 22.1(j) applies) states that the Modification will result in Modification Costs, the State must:

- A. if the Modification is being funded by the State, pay the relevant PPP Co the Modification Costs stated in the PPP Cos' Modification Notice as relating to the AL Project progressively within 10 Business Days after each month in which the relevant work was undertaken; or
- B. if the Modification is being funded by FinCo, pay FinCo or the relevant PPP Co when due the amounts (if any) which PPP Cos' Modification Notice specifies will be paid by the State (as subsequently agreed, if clause 22.1(j) applies); or

- (ii) **(Modification Costs, when not agreed):** clauses 22.1(l), 22.1(n) or 22.1(o) which results in Modification Costs, the State must pay FinCo or the relevant PPP Co the Modification Costs:

- A. pending determination in accordance with clause 44 (or agreement between the parties), as reasonably determined by the State; and
- B. following the determination in accordance with clause 44 (or agreement between the parties), as so determined (or agreed),

progressively within 10 Business Days after each month in which the relevant work was undertaken.

If the Modification Costs paid under clause 22.1(p)(ii)A are more or less than the Modification Costs for the relevant month as subsequently determined or agreed, then the difference will be paid by the relevant party to the other; or

- (iii) **(Modification Saving):** clauses 22.1(h), 22.1(j), 22.1(l), 22.1(n) or 22.1(o) that has a Modification Saving under PPP Cos' Modification

Notice, the relevant PPP Co must pay the State 100% of the Modification Saving as follows:

- A. to the extent that the Modification Savings relate to the AL D&C Activities, the Modification Savings may be:
    - 1) set-off against Modification Costs in respect of the AL D&C Activities payable by the State to the relevant PPP Co under clause 22.1(p); or
    - 2) where this is not set-off it must be paid by the relevant PPP Co to the State progressively within 10 Business Days after each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Modification; or
  
  - B. to the extent that the Modification Savings relate to the O&M Activities, the relevant PPP Co must pay the Modification Savings to the State in the manner and at the time as agreed between the State and the relevant PPP Co or, to the extent that they fail to agree, as resolved in accordance with clause 44 (or as reasonably determined by the State pending determination under clause 44). In making a determination under clause 44, the expert or arbitrator must ensure, and the parties must require that the expert or arbitrator ensures, the timing of the payment will not have an adverse impact upon the ability which, prior to the change, the relevant PPP Co had to:
    - 1) pay or repay the Project Debt on the due dates for payment (without regard to any acceleration of the obligation to pay or repay); and
    - 2) give to the Equity Investors (treated as if each was a Notional Initial Equity Investor) the Equity Return they would have received if the Modification had not been implemented.
- (q) **(Payment of NB Contract Price or EWAG Contract Price):** If a PPP Co implements (or procures the implementation by the NB Works Contractor of) a Modification relating to the NB Project or the EWAG Project in accordance with:
- (i) **(NB Contract Price or EWAG Contract Price agreed):** clauses 22.1(h) or 22.1(j), the State must pay the NB Works Contractor the NB Contract Price or the EWAG Contract Price (as adjusted in PPP Cos' Modification Notice) in accordance with clause 14 (Payments) of the NB Works Deed and the NB Payment Schedule or clause 19 (Payments) of the EWAG Works Deed and the EWAG Payment Schedule (as amended in PPP Cos' Modification Notice); or
  - (ii) **(NB Contract Price or EWAG Contract Price, when not agreed):** clauses 22.1(l), 22.1(n) or 22.1(o), the State must pay the NB Works Contractor the NB Contract Price or the EWAG Contract Price:

- A. pending determination in accordance with clause 44 (or agreement between the parties), as reasonably determined by the State; and
- B. following the determination in accordance with clause 44 (or agreement between the parties), as so determined (or agreed), progressively in accordance with clause 14 (Payments) of the NB Works Deed and the NB Payment Schedule or clause 19 (Payments) of the EWAG Works Deed and the EWAG Payment Schedule (amended as determined or agreed).

If the amount paid by the State under clause 22.1(q)(ii)A is more or less than the amount for the relevant month as subsequently determined or agreed, then the difference will be paid by the relevant party to the other.

- (r) **(Excluded Works):** Each PPP Co acknowledges that the State may issue a Modification Proposal that decreases, omits, deletes or removes work from the scope of the:
  - (i) O&M Activities conducted on, or the area of, the Licensed Maintenance Areas;
  - (ii) NB Works or the NB Project Activities; or
  - (iii) EWAG Works or the EWAG Project Activities,

**("Excluded Works")** and may carry out that Excluded Work itself or may engage another person to carry out the Excluded Work on its behalf.
- (s) **(No liability unless Modification Order):** Except where a PPP Co is directed to carry out a Modification pursuant to a "Modification Order" issued by the State under clause 22.1(f), 22.1(j), 22.1(l), 22.1(m) or 22.1(o), a PPP Co will not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Modification proposed by the State.

## 22.2 Modifications proposed by a PPP Co

- (a) **(No Modification without consent):** The PPP Cos must not (and must procure that the NB Works Contractor does not) undertake any Modification without the State's prior consent.
- (b) **(A PPP Co may propose a Modification):** A PPP Co may propose a Modification by giving a written notice with details of:
  - (i) the proposed Modification;
  - (ii) the reason for the proposed Modification;
  - (iii) each PPP Co's estimate of the Modification Costs it and the NB Works Contractor will incur, or the Modification Savings it and the NB Works Contractor will derive, by carrying out the proposed Modification (including a breakdown of the Modification Costs or Modification Savings relating to each of the AL Project, the EWAG Project and the NB Project);

- (iv) the time within, and the manner in which, each PPP Co proposes to implement (or procure that the NB Works Contractor implements) the proposed Modification;
  - (v) the effects which the proposed Modification will have on the D&C Program;
  - (vi) the effects which the proposed Modification will have on:
    - A. the workmanship, durability or functional integrity of any element of the Project Works, the Tollroad, EWAG or the Northern Busway (Windsor to Kedron);
    - B. the use of the Tollroad, EWAG or the Northern Busway (Windsor to Kedron) by the general public for the safe, efficient and continuous passage of vehicles;
    - C. TQ Trustee's ability to handover the Tollroad in accordance with the requirements of this deed;
    - D. each PPP Co's and the NB Works Contractor's ability to handover the Busway and EWAG (other than BAC EWAG) in accordance with the requirements of this deed, the NB Works Deed or the EWAG Works Deed; and
    - E. each PPP Co's ability to:
      - 1) satisfy any warranty given by that PPP Co under this deed (and the NB Works Contractor's ability to satisfy any warranty given by the NB Works Contractor under the NB Works Deed and the EWAG Works Deed); or
      - 2) perform any of its other obligations under this deed (and the NB Works Contractor's ability to perform any of its obligations under the NB Works Deed and the EWAG Works Deed); and
  - (vii) the changes (if any) required to the Approvals, and any additional Approvals to accommodate the proposed Modification.
- (c) **(A PPP Co to provide statement):** If the State requires, a PPP Co must provide in respect of any Modification it proposes:
- (i) a written statement stating that the proposed Modification:
    - A. will not adversely affect the functional integrity of the Tollroad, EWAG, the Northern Busway (Windsor to Kedron) or the ability of each PPP Co and the NB Works Contractor to carry out the Project Activities in accordance with this deed, the EWAG Works Deed and the NB Works Deed; and
    - B. will not adversely affect the quality standards, warranties and other obligations required under this deed, the EWAG Works Deed and the NB Works Deed; and
  - (ii) any other information and supporting documentation the State requires.

- (d) **(State may approve or reject):** If a PPP Co gives a notice under clause 22.2(b) together with any written statement or other information or supporting documentation which the State requires under clause 22.2(c), the State:
- (i) will consider that PPP Co's proposed Modification in good faith; and
  - (ii) subject to clause 22.2(e):
    - A. may approve (with or without conditions) or reject the proposed Modification in its absolute discretion by notice to that PPP Co (which in the case of an approval must be titled "Modification Approval"); and
    - B. will be under no obligation to approve the proposed Modification for the convenience of or to assist that PPP Co or the NB Works Contractor.

If the State approves the Modification:

- (iii) the relevant PPP Co must proceed to implement (or procure that the NB Works Contractor proceeds to implement) the Modification on the basis approved by the State; and
  - (iv) that PPP Co will be relieved of its obligations under this deed and the NB Works Contractor will be relieved of its obligations under the NB Works Deed or the EWAG Works Deed to the extent specified in the State's approval.
- (e) **(Modifications required as a result of a change in Law or advancement in technology):** The State must, to the extent a Modification requested by a PPP Co is required to:
- (i) ensure that the Project Works, EWAG, the Northern Busway (Windsor to Kedron) or the Tollroad complies with a change in Law; or
  - (ii) upgrade the Tollroad as required under clause 19.4(c),
- in its discretion:
- (iii) not reject the Modification proposed by a PPP Co;
  - (iv) direct a PPP Co to carry out a Modification in accordance with clause 22.1 to deal with the change in Law or advancement in technology or operation and maintenance practices (as applicable); or
  - (v) take such other action as the State considers necessary (other than to implement the Modification either itself or by engaging a third party) to ensure that the Project Works, EWAG, the Northern Busway (Windsor to Kedron) or the Tollroad complies with the change in Law or advancement in technology or operation and maintenance practices (as applicable).

If the change in Law is a Discriminatory Change in State Law then clause 26 will apply. If the change in Law is a NB Discriminatory Change in State Law then clause 4 (NB Discriminatory Change in State Law) of the NB Works Deed will apply. If the change in Law is an EWAG Discriminatory Change in State Law, then clause 9 (EWAG Discriminatory Change in State Law) of the EWAG Works Deed

will apply. If the change in Law is a Change in Air Filtration Law then clause 9.6 will apply.

- (f) **(The relevant PPP Co to bear risks and costs):** Unless otherwise agreed in writing by the State, the relevant PPP Co will bear all risks and costs:
- (i) associated with proposing a Modification and providing the details under clause 22.2(a) and complying with clause 22.2(c);
  - (ii) reasonably incurred by the State in assessing a Modification proposed by a PPP Co; and
  - (iii) associated with carrying out a Modification (including the risk in relation to obtaining and complying with Approvals) proposed by a PPP Co.

Subject to clauses 9.4(b), 9.6, 26.1(c) and 26.1(h) of this deed and clauses 4 (NB Discriminatory Change in State Law) and 16 (Uninsurable Force Majeure Events) of the NB Works Deed and clauses 9 (EWAG Discriminatory Change in State Law) and 21 (Uninsurable Force Majeure Events) of the EWAG Works Deed, the PPP Cos will not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Modification proposed by a PPP Co and approved by the State under clause 22.2(d).

- (g) **(Modification Savings):** If a PPP Co implements (or procures that the NB Works Contractor implements) a Modification in accordance with this clause 22.2, that has a Modification Saving, that PPP Co must pay (or must procure that the NB Works Contractor pays) the State 50% of any Modification Saving as follows:
- (i) to the extent that the Modification Savings relate to the D&C Activities, the Modification Savings may be:
    - A. set off against any Modification Costs in respect of the D&C Activities payable by the State to the relevant PPP Co; or
    - B. where this is not set-off:
      - 1) in relation to the AL Project, it must be paid by that PPP Co to the State, progressively within 10 Business Days after each month in which the relevant work has been deleted or omitted would have been undertaken but for the Modification; or
      - 2) in relation to the NB Project or the EWAG Project, the PPP Cos must procure that it is paid by the NB Works Contractor to the State in accordance with clause 14 (Payments) of the NB Works Deed or clause 19 (Payments) of the EWAG Works Deed (as applicable); and
  - (ii) to the extent that the Modification Savings relate to the O&M Activities, that PPP Co must pay the Modification Savings to the State in the manner and at the time as agreed between the State and that PPP Co or, to the extent that they fail to agree, as resolved in accordance with clause 44. In making a determination, the expert or arbitrator must ensure, and the parties must require that, the timing of the payment will not have an adverse impact upon the ability which, prior to the change, that PPP Co had to:

- A. pay or repay the Project Debt on the due dates for payment (without regard to any acceleration of the obligation to repay); and
- B. give the Equity Investors (treated as if each was a Notional Initial Equity Investor) the Equity Return they would have received if the Modification had not been made.

## 22.3 Pre-Agreed Modifications

- (a) **(Pre-Agreed Modification Election):** The State may at any time prior to the relevant Election Date, in its absolute discretion and without being under any obligation to do so, direct by way of a Modification any Pre-Agreed Modification by issuing to the PPP Cos a notice titled "Pre-Agreed Modification Election".
- (b) **(Deemed amendment):** The State and the PPP Cos agree that if a "Pre-Agreed Modification Election" is issued by the relevant Election Date, from the date of the "Pre-Agreed Modification Election", the State Project Documents will be deemed to be amended in accordance with the relevant amendments set out in the Pre-Agreed Modification Schedule.
- (c) **(PPP Cos to implement Pre-Agreed Modification):** If the State issues a "Pre-Agreed Modification Election" by the relevant Election Date, the PPP Cos must:
  - (i) carry out (or procure the carrying out by the NB Works Contractor of) their obligations under the State Project Documents as those obligations are amended by clause 22.3(b); and
  - (ii) implement (or procure the implementation by the NB Works Contractor of) the Pre-Agreed Modification in accordance with the relevant Pre-Agreed Modification Schedule.
- (d) **(Payment of Pre-Agreed Modification Cost):** If a PPP Co implements (or procures the implementation by the NB Works Contractor of) a Pre-Agreed Modification relating to:
  - (i) the AL Project, the State must pay the relevant PPP Co the relevant Pre-Agreed Modification Cost stated in the Pre-Agreed Modification Schedule:
    - A. progressively within 10 Business Days after each month in which the relevant work was undertaken; or
    - B. as otherwise specified in the relevant part of the Pre-Agreed Modification Schedule;
  - (ii) the EWAG Project, the State must pay the NB Works Contractor the EWAG Contract Price (as adjusted by the Pre-Agreed Modification Cost in accordance with the Pre-Agreed Modification Schedule):
    - A. in accordance with clause 19 (Payments) of the EWAG Works Deed and the EWAG Payment Schedule (as amended in accordance with the Pre-Agreed Modification Schedule); or
    - B. as otherwise specified in the relevant part of the Pre-Agreed Modification Schedule; or

- (iii) the NB Project, the State must pay the NB Works Contractor the NB Contract Price (as adjusted by the Pre-Agreed Modification Cost in accordance with the Pre-Agreed Modification Schedule):
  - A. in accordance with clause 14 (Payments) of the NB Works Deed and the NB Payment Schedule (as amended in accordance with the Pre-Agreed Modification Schedule); or
  - B. as otherwise specified in the relevant part of the Pre-Agreed Modification Schedule.

(e) **(No further payment, acceleration or extension of time):** The PPP Cos, in respect of a Pre-Agreed Modification, acknowledge and agree that:

- (i) payment of the Pre-Agreed Modification Cost in accordance with clause 22.3(d) will be full compensation for any Loss or delay they (or their Associates) suffer or incur arising out of or in connection with the implementation of the relevant Pre-Agreed Modification and no further payment or adjustment will be made; and
- (ii) subject to clause 22.3(e)(i), they are not entitled to make any Claim, including for any:
  - A. acceleration to the carrying out of the Project Works which the PPP Cos (or their Associates) may perform at any time in order to achieve:
    - 1) Tollroad Completion by the Date for Tollroad Completion in accordance with this deed;
    - 2) EWAG Practical Completion by the Date for EWAG Practical Completion or EWAG Final Completion by the Date for EWAG Final Completion; or
    - 3) NB Practical Completion at least 2 months prior to Tollroad Completion or NB Final Completion by the Date for NB Final Completion in accordance with the NB Works Deed; or
  - B. extension of time for any delay to the carrying out of the Project Works (and for the avoidance of doubt a Pre-Agreed Modification relating to the EWAG Project will not constitute an Extension Event (as defined in the EWAG Works Deed) and will not entitle the NB Works Contractor to an extension of time under clause 13.5 (Extension of time) of the EWAG Works Deed),

in connection with the implementation of the relevant Pre-Agreed Modification.

(f) **(After Election Date):** Nothing in this clause 22.3 prevents the State from:

- (i) issuing a "Modification Proposal" under clause 22.1(a); or
- (ii) directing a Modification by issuing a "Modification Order" under clause 22.1(f), 22.1(j), 22.1(l), 22.1(m) or 22.1(o),

that involves the same (or similar) changes to the Project Works as a Pre-Agreed Modification after the relevant Election Date.

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## 23. Payments and revenue upside

### 23.1 Additional rent

- (a) **(Additional Rent):** TQ Trustee must pay to the State, as additional rent under the Lease, the proportion of the amount by which the aggregate revenue derived by the Group in each relevant period, exceeds that projected for the same relevant period in the Base Case Financial Model.
- (b) **(Proportion payable):** The proportion of the amount of any such excess applicable to each relevant period is specified in Schedule 8.
- (c) **(Revenue):** In this clause 23.1, the concept of 'revenue':
  - (i) includes all tolls, charges, fees, additional revenue resulting from a Modification (except to the extent that a return to the State relating to a Modification has been agreed or determined in accordance with clause 22) and other revenue amounts received in connection with the Projects; and
  - (ii) excludes:
    - A. revenue directly attributable to redress afforded under clause 26;
    - B. revenue which is agreed under clause 23.2(a)(ii) or determined in accordance with clause 44 to be derived by reason of a Compensable Enhancement net of any reduction of revenue agreed under clause 23.2(c)(iv) or determined in accordance with clause 44 to be suffered in the same relevant period by reason of a Negative Compensable Enhancement and as adjusted under clause 23.2(c)(vi) for any carried forward amount;
    - C. revenue referred to in clause 20.3(a)(iii) to the extent that it is remitted to the provider of another tollroad in accordance with an Interoperability Agreement;
    - D. payment of Modification Costs by the State under clause 22.1(p);
    - E. revenue directly attributable to insurance receipts, except under business interruption or other insurance to the extent that such receipts represent payments for loss of past or anticipated revenue; and
    - F. drawings in accordance with a Refinancing in accordance with clause 36.
- (d) **(Relevant periods):** In this clause 23.1, a 'relevant period' is a period which commences on the Date of Tolling System Completion (or the Date for Tollroad Completion, if later), and ends on the last day of the Financial Year during which the Date of Tolling System Completion (or the Date for Tollroad Completion if later) occurs and each subsequent 12 month period ending on the last day of the

relevant Financial Year except in relation to the last such period which commences on the first day of the Financial Year in which the Concession Period ends and ends on the last day of the Concession Period.

If a relevant period commences on a day other than 1 July or finishes on a day other than 30 June during a Financial Year, then the amount of revenue projected to be derived by the Group for the relevant period will be calculated in the following manner:

$$x = \left( a \times \frac{b}{c} \right)$$

where:

- x = the base case revenue projected to be derived by the Group for the relevant period;
- a = the amount set out in the Base Case Financial Model as the aggregate revenue for the Financial Year (or the amount determined by the formula set out below for the relevant Financial Year) on the last day of which the relevant period ends;
- b = the number of days of the relevant Financial Year which fall within the relevant period; and
- c = the number of days in the relevant Financial Year.

If the Concession Period is extended beyond the date that is the 45th anniversary of the date of Financial Close ("**Original Concession Period Finish Date**") the projected revenues for each Financial Year ending after the Original Concession Period Finish Date will be determined in the following manner:

$$d = e \times \left( \frac{R_n}{R_{n-1}} \right)$$

where:

- d = the projected revenues for each Financial Year ending after the Original Concession Period Finish Date;
- e = the projected revenues for the previous Financial Year;
- R<sub>n</sub> = the total project revenue shown in the final complete Financial Year in the Base Case Financial Model; and
- R<sub>n-1</sub> = the total project revenue shown in the complete Financial Year prior to the final complete Financial Year in the Base Case Financial Model.

- (e) **(Notification):** TQ Trustee must, within 15 Business Days of the expiry of the relevant period, notify the State as to whether it is entitled to any payment (and if so, the amount of that payment) under this clause 23.1 and provide such details as the State reasonably requires as to the amount of the aggregate revenue derived by the Group in the relevant period.
- (f) **(Time for payment):** Any payment to be made under clause 23.1(a) in relation to a relevant period must be made within 20 Business Days of the expiry of that period,

provided that payment for the last such period will be made on the expiration of that period.

- (g) **(Priority):** Any payment to be made under clause 23.1(a) must be treated as an "operating expense" and take priority to debt service.
- (h) **(No clawback):** TQ Trustee may not withhold or recover amounts paid or revenue foregone under this clause 23.1 with respect to a relevant period if for another relevant period ending before or after that relevant period, the aggregate revenue derived by the Group does not exceed that projected in the Base Case Financial Model.
- (i) **(Reduction in Concession Period):**
  - (i) The State may give notice to a PPP Co electing to forego its rights to a payment under clause 23.1(a) (or part of such a payment) and instead have either:
    - A. the Concession Period reduced by a period not greater than 10% of the remaining Concession Period; or
    - B. TQ Operations not charge Tolls for a period,that will be calculated so that TQ Operations will forego an amount which does not exceed the amount of that payment.
  - (ii) If the State gives a notice under clause 23.1(i)(i), the State and a PPP Co must use their respective reasonable endeavours to agree on the length of the reduction in the Concession Period or the Toll free period (as applicable) that is necessary to achieve the result contemplated in clause 23.1(i)(i). If the matter is not agreed within 10 Business Days of the State giving the notice under clause 23.1(i)(i) either party may refer the matter for dispute resolution under clause 44.

## 23.2 Compensable Enhancements

- (a) **(Compensable Enhancement notification and consultation):**
  - (i) **(Notice):** The State may notify the PPP Cos of a Compensable Enhancement provided that the notice is given within 12 months of the occurrence of the Compensable Enhancement.
  - (ii) **(Consultation):** If the State gives a notice under clause 23.2(a)(i), the State and the PPP Cos must then consult in good faith and use their reasonable endeavours to agree on the amount of the additional revenue (net of additional expenses likely to be incurred in deriving that additional revenue) derived and likely to be derived by the Group by reason of the Compensable Enhancement in the Financial Year in which the notice was given and each subsequent Financial Year during the Concession Period (assuming no payments from a PPP Co to the State under clause 23.2(d) in respect of the Compensable Enhancement).
  - (iii) **(No agreement):** If no agreement is reached between the State and the PPP Cos as to the existence of a Compensable Enhancement or an amount under clause 23.2(a)(ii) within 20 Business Days of the notice under clause 23.2(a)(i), either the State or the PPP Cos may refer the matter for dispute resolution under clause 44.

- (b) **(Meaning of Compensable Enhancement):**
- (i) **(Meaning):** A Compensable Enhancement is a material circumstance or event that occurs or takes place after the date of this deed which is a consequence of the exercise of any right or power of the type referred to in clause 21.1, including connections to the Tollroad to which clause 21.3 applies.
  - (ii) **(Exclusions):** A Compensable Enhancement does not include:
    - A. a State Directed Benefit;
    - B. actual or projected growth in road transportation network usage other than growth in traffic generated or attracted by the relevant circumstance or event;
    - C. a Modification; or
    - D. subject to clause 23.2(b)(iii), a circumstance or event constituted by the completion or implementation of all or part of any Assumed Transport Network Enhancement (including work that is incidental to that Assumed Transport Network Enhancement) on or after the estimated year of completion for that Assumed Transport Network Enhancement as set out in Schedule 15.
  - (iii) **(Assumed Transport Network Enhancements):** If all or part of any Assumed Transport Network Enhancement is completed or implemented prior to the estimated year of completion or implementation for that enhancement as set out in Schedule 15, then Compensable Enhancements and Negative Compensable Enhancements do include that Assumed Transport Network Enhancement for the period commencing in the year in which the enhancement is completed or implemented and ending in the year preceding the year in which the enhancement was estimated to be completed or implemented as set out in Schedule 15.
- (c) **(Negative Compensable Enhancements):**
- (i) **(Meaning):** A Negative Compensable Enhancement is a material circumstance or event that occurs or takes place after the date of this deed, which is a consequence of the exercise of any right or power of the type referred to in clause 21.1.
  - (ii) **(Exclusions):** A Negative Compensable Enhancement does not include:
    - A. subject to clause 23.2(b)(iii), a circumstance or event constituted by the completion or implementation of all or part of any Assumed Transport Network Enhancement (including work that is incidental to that Assumed Transport Network Enhancement) on or after the estimated year of completion for that Assumed Transport Network Enhancement as set out in Schedule 15; or
    - B. an event referred to in clause 26.1(a) or 26.1(b) for which a method of redress has been agreed or determined under clause 26.

- (iii) **(Notice):** The PPP Cos may notify the State of a Negative Compensable Enhancement provided that the notice is given within 12 months of the occurrence of the Negative Compensable Enhancement.
  - (iv) **(Consultation):** If the PPP Cos give a notice under clause 23.2(c)(iii), on the next occasion when the parties are consulting in relation to Compensable Enhancements under clause 23.2(a)(ii), the State and the PPP Cos must then consult in good faith and use their reasonable endeavours to agree on the amount of the reduction of revenue (net of any savings of expenses likely to result from that reduction of revenue) suffered or likely to be suffered by the Group by reason of the Negative Compensable Enhancement in the Financial Year in which the notice was given and each subsequent Financial Year during the Concession Period.
  - (v) **(No agreement):** If no agreement is reached between the State and the PPP Cos as to the existence of a Negative Compensable Enhancement or an amount under clause 23.2(c)(iv) within 20 Business Days of the notice under clause 23.2(c)(iii), either the State or the PPP Cos may refer the matter for dispute resolution under clause 44.
  - (vi) **(Carry forward):** If in any Financial Year the amount agreed under clause 23.2(c)(iv) or determined in accordance with clause 44 in respect of a Negative Compensable Enhancement exceeds the amount agreed under clause 23.2(a)(ii) or determined in accordance with clause 44 for that Financial Year in respect of Compensable Enhancements, the excess will be carried forward and used in subsequent calculations under clauses 23.2(d)(i) and 23.1(c)(ii)B.
- (d) **(Payment of compensation):**
- (i) **(Amount payable):** For each Financial Year, 50% of:
    - A. any amount agreed under clause 23.2(a)(ii); minus
    - B. any amount agreed under clause 23.2(c)(iv) as adjusted under clause 23.2(c)(vi) for any carried forward amount on account of Negative Compensable Enhancements,

or in each case determined in accordance with clause 44 must be paid in cash by TQ Trustee to the State, as additional rent in respect of the Lease. The payments must be made on the Payment Date relevant to that Financial Year. The obligation to make additional rent payments in respect of an amount under clause 23.2(a) is, however, subject to clause 23.2(d)(iv).
  - (ii) **(Pro rata for early termination):** If this deed terminates other than by reason of the passage of time, a proportion only of the amount applicable to the Financial Year in which this deed terminates need be paid on the Payment Date relevant to that Financial Year, equivalent to the proportion of that Financial Year that has expired prior to termination.
  - (iii) **(Time for Payment):**
    - A. Any payment to be made under clause 23.2(d)(i) in relation to any Financial Year must be made:

- 1) subject to clause 23.2(d)(iii)B, by the later of:
  - a) the Payment Date; and
  - b) if, in respect of a payment under clause 23.2(d)(i), on the Payment Date the Group was not in a position to make the required payment and pay all Current Project Payments, the first date on which the Group is able to make the required payment whilst the Group is still able to pay all Current Project Payments; or
- 2) if the Financial Year concerned is the one in which this deed terminates, the date which is 20 Business Days after the date of termination.

B. If a payment to be made under this clause 23.2(d)(iii) is not made or provided (as applicable) on the relevant Payment Date, the PPP Cos must ensure that no distribution, principal payment, interest or other payment is made by the Group directly or indirectly to any Equity Investor until that amount is paid in full.

(iv) **(Circumstance ceasing):** If:

A. a circumstance or event which constitutes a Compensable Enhancement ceases to subsist, payments required to be made by TQ Trustee to the State as additional rent because of the Compensable Enhancement:

- 1) in respect of the Financial Year in which that circumstance or those consequences cease to subsist, will be reduced by a proportion corresponding to the proportion of the Financial Year remaining after that cessation; and
- 2) subject to clause 23.2(d)(iv)A.1), must no longer be made; or

B. a circumstance or event which constitutes a Negative Compensable Enhancement ceases to subsist, deductions which TQ Trustee is entitled to make from rent payments to the State under the Lease because of the Negative Compensable Enhancements:

- 1) in respect of the Financial Year in which that circumstance or those consequences cease to subsist, will be reduced by a proportion corresponding to the proportion of the Financial Year remaining after that cessation; and
- 2) subject to clause 23.2(d)(iv)B.1) must no longer be made.

### 23.3 Interest

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

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

### 23.4 Set-off

- (a) **(The State's payments):** Subject to clause 23.4(b), the State may set-off or deduct from any moneys due to a PPP Co:
  - (i) any debt or other moneys due from any Group Member to the State; and
  - (ii) any bona fide claim to any money which the State may have against any Group Member, whether for damages or otherwise,whether under the State Project Documents or otherwise at law relating to the Projects.
- (b) **(Exception):** Clause 23.4(a) does not apply to the Project Debt portion of any Early Termination Amount.
- (c) **(PPP Cos' payments):** Each PPP Co must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless that PPP Co is compelled by law to make such a deduction or withholding.

### 23.5 GST

- (a) Notwithstanding any other provision of this deed, the EWAG Works Deed or the NB Works Deed, any amount payable for a supply made under this deed, the EWAG Works Deed or the NB Works Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any input tax credits which that party is entitled to in respect of that cost, expense or other amount.
- (b) Subject to clause 23.5(e), if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this deed, the EWAG Works Deed or the NB Works Deed:
  - (i) any amount payable or consideration to be provided under any other provision of this deed, the EWAG Works Deed or the NB Works Deed for that supply ("**Agreed Amount**") is exclusive of GST;
  - (ii) an additional amount will be payable by the party providing consideration for that supply (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and

- (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this deed, the EWAG Works Deed or the NB Works Deed.
- (c) Subject to clause 23.5(e), if for any reason, the GST payable by the Supplier in respect of a supply it makes under this deed, the EWAG Works Deed or the NB Works Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 23.5(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause 23.5, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties (absent manifest error). The expert will act as an expert and not as an arbitrator and will take into account the terms of this deed, the EWAG Works Deed or the NB Works Deed, the matters required to be taken into account by the Supplier under this clause 23.5 and any other matter considered by the expert to be relevant to the determination. The parties must release the expert from any liability in acting as an expert, except in the case of fraud on the part of the expert. However, this clause 23.5(d) shall not apply to any supply dealt with under clause 23.5(e).
- (e) Notwithstanding clause 23.5(b), if two parties (or entities on whose behalf those parties are acting) in accordance with this deed, the EWAG Works Deed or the NB Works Deed exchange non-monetary consideration then, subject to clause 23.5(f), the additional amount payable by the Recipient to the Supplier on any supply shall be limited to an amount calculated as the monetary consideration provided by the Recipient for the taxable supply being made by the Supplier multiplied by the applicable GST rate.
- (f) Where it is determined, whether by agreement between the parties or by demand, assessment or private ruling issued by the Commissioner of Taxation that there is a disparity between:
  - (i) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Recipient to the Supplier; and
  - (ii) the sum of the GST exclusive market value of the non-monetary consideration and the GST exclusive monetary consideration (if any) being provided by the Supplier and having their nexus with the non-monetary consideration and monetary consideration being provided by the Recipient and referred to in clause 23.5(f)(i),

the Supplier and the Recipient will use best endeavours to determine a mutually acceptable means of calculating additional amounts to be provided between the parties to ensure, as far as possible that neither the Supplier nor the Recipient suffers a net cost or loss.

- (g) If within 30 Business Days of the determination under clause 23.5(f), the parties are unable to agree on a means of calculating the additional amounts payable, clause 23.5(b) shall apply without any limitation imposed by clauses 23.5(e) or 23.5(f), however:
  - (i) the Supplier must only issue a tax invoice or an adjustment note to reflect the application of clause 23.5(f) after the parties have either reached an agreement under clause 23.5(f) or have determined that they are unable to reach such an agreement; and
  - (ii) the additional amount payable pursuant to clause 23.5(f) will only be payable 5 Business Days after the receipt by the Recipient of the tax invoice or adjustment note issued by the Supplier in accordance with clause 23.5(f).
- (h) Where any party to this deed receives a demand, assessment or private ruling regarding the matters addressed in clauses 23.5(e) or 23.5(f), it must notify the other parties to this deed of that fact and provide them with a copy of the demand, assessment or private ruling within 10 Business Days of receiving it. Before any party to this deed applies for a private ruling regarding the matters addressed in clauses 23.5(e) or 23.5(f), it must provide the other parties to this deed with a copy of the private ruling request it intends to lodge with the Commissioner of Taxation no less than 20 Business Days prior to its lodgement of same.
- (i) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party in determining its GST payable on any supply made by that other party under or in connection with this deed, the EWAG Works Deed or the NB Works Deed or any input tax credits, adjustments or refunds in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this deed, the EWAG Works Deed or the NB Works Deed.
- (j) Despite any other provision of this deed, this clause 23.5 will survive the termination of this deed, the EWAG Works Deed or the NB Works Deed.
- (k) A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.

## **23.6 General liability for duties and similar taxes**

The PPP Cos must pay, and indemnify the State against, all Taxes incurred in connection with:

- (a) the execution, stamping and registration of any the State Project Document;
- (b) the performance of any State Project Document and each transaction effected by or made under any State Project Document including the Project Activities; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under any State Project Document.

### 23.7 Land Based Rates and Taxes

The PPP Cos will be liable for all land-based rates, stamp duty and charges, including local government rates, water and sewerage and drainage rates in respect of the Leased Area as from the Date of Tollroad Completion.

### 23.8 Community Infrastructure Payment

Not used

### 23.9 Interest Rate Refinancing Gain

Not used

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## 24. PPP Cos' risks

Without limiting clause 4.3, each PPP Co accepts the following risks (except as otherwise expressly provided in this deed, the EWAG Works Deed or the NB Works Deed):

- (a) **(Cost):** the actual cost of the Projects or the performance of the Project Activities being greater than the cost estimated;
- (b) **(Time):** the time or period of performance of the Project Activities being greater than estimated;
- (c) **(Traffic):** traffic flow on the Tollroad being greater or less than estimated or not being economically viable;
- (d) **(Revenue):** revenue generated in respect of the AL Project being less than estimated;
- (e) **(Extra Land):** Extra Land being necessary to enable that PPP Co to carry out the Project Activities;
- (f) **(Land conditions):** land conditions;
- (g) **(Fit for purpose):** the Project Works not being fit for their intended purposes as specified in, or ascertainable from, the State Project Documents;
- (h) **(Technical obsolescence):** technical obsolescence occurring in relation to any plant, equipment or systems (including the Tolling System) used, or proposed to be used, in relation to the AL Project;
- (i) **(Tolling):** the Tolling System not operating effectively;
- (j) **(Laws and Taxes):** any Law or Taxes (or change in Law or Taxes) affecting that PPP Co's rights, obligations or liability under the Project Documents;
- (k) **(Industrial action):** industrial action;
- (l) **(Weather):** inclement weather;
- (m) **(Performance Specification):** the risk that compliance with the Performance Specification will not satisfy that PPP Co's obligations under the State Project Documents;

- (n) **(Project Activities):** all risks associated with carrying out the Project Activities including any changes in the Project Activities causing delay, increased cost or decreased revenue;
- (o) **(Interfaces):** the interface between performing the Project Activities and any other works, infrastructure, PUP, plant, equipment or systems;
- (p) **(Approvals):** delay in, or refusal by, any Authority in granting an Approval or the conditions of an Approval or of a legal challenge to an Approval (except the Planning Approval as referred to in clause 9.5) or obtaining an Approval subject to conditions unsatisfactory to the relevant PPP Co;
- (q) **(Insurance):** the ability to obtain and maintain insurances required by this deed, or the adequacy of those insurances;
- (r) **(Safety):** any workplace health and safety matters; and
- (s) **(Finance):** availability and cost of finance.

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## 25. Changes in Law

- (a) Subject to clauses 25(b) and 25(c), each PPP Co will be liable for the consequences of, and will have no Claim against the State arising out of or in any way in connection with, any changes in Law.
- (b) Clause 26.1 will apply if a Discriminatory Change in State Law occurs.
- (c) Clause 9.6 will apply if a Change in Air Filtration Law occurs.

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## 26. Material Adverse Effect regime

### 26.1 Possible MAE Events

Each of the following events is a Possible MAE Event:

- (a) **(Principal Traffic Connections):** subject to clause 26.13, any of the Principal Traffic Connections referred to in Schedule 7 are closed for reasons other than the road closures which are contemplated by clause 21.2;
- (b) **(Competing Tunnel):** subject to clause 26.13, a Competing Tunnel is opened to traffic prior to the expiry of the Concession Period;
- (c) **(Change in Law):** a Discriminatory Change in State Law occurs;
- (d) **(Native Title Claim):** TQ Operations or the O&M Contractor is directed, ordered or required to cease to perform the O&M Activities (or to change the way it does so) as referred to in clause 8.7(c) other than by way of a Final Court Decision;
- (e) **(Challenge to Planning Approval):** TQ Operations or the O&M Contractor is ordered by a court to stop carrying out the O&M Activities (or to change the way it does so) as referred to in clause 9.5(a) other than by way of a Final Court Decision (except where the legal challenge is initiated or upheld, or the court order is made, due to a PPP Co's failure to comply with its obligations under this deed or some other wrongful act or omission of a PPP Co or its Associates);

- (f) **(Uninsurable Force Majeure):** an Uninsurable Force Majeure Event occurs that affects the AL Project Activities, the AL Works, the Tollroad or the Maintained Non-Tollroad Works;
- (g) **(Enforcement of tolls):** the offence of failing or refusing to pay the Toll for use of the Tollroad is not enforced, or recovery procedures are not pursued, in each case in a similar manner as the enforcement and recovery procedures for other comparable tollroad offences or tollroads are pursued by the State at the date of this deed;
- (h) **(Changes in Air Filtration Law):** a Change in Air Filtration Law that affects the AL Project occurs after the Tollroad Opening Date; or
- (i) **(Change to Perpetual Lease):** the Perpetual Lease is granted on terms materially different from those contained in Schedule 19 of this deed or is materially amended, other than as a result of a change in Law that is not a Discriminatory Change in State Law, unless such amendment is a result of a breach by a PPP Co or its Associates of any State Project Document or some other wrongful act or omission by a PPP Co or its Associates.

## 26.2 PPP Cos to notify the State of Possible MAE Events

If a Possible MAE Event occurs and this has had, or has started to have, or will have, a Material Adverse Effect, then the PPP Cos:

- (a) may provide the State with notice of that fact, including full details of the effect of the Possible MAE Event on the AL Project; and
- (b) must use all reasonable endeavours to mitigate the adverse consequences of the Possible MAE Event.

## 26.3 Time limit

A notice given under clause 26.2(a) will only be valid if given within 12 months after the occurrence of the Possible MAE Event has started to have a Material Adverse Effect.

## 26.4 Occurrence of Possible MAE Event

- (a) **(Obligation to negotiate):** If a notice is given under clause 26.2, then as soon as possible, but no later than 20 Business Days after the State has received that notice, the parties must negotiate in good faith in an endeavour to agree on:
  - (i) whether or not the notice is valid;
  - (ii) whether or not the relevant Possible MAE Event has occurred; and
  - (iii) if it has, whether or not the Possible MAE Event has had, or has started to have, or will have, a Material Adverse Effect.
- (b) **(Disputes):** If the parties do not reach agreement on the matters referred to in clause 26.4(a) within 20 Business Days after commencing the negotiations then either party may refer the matter for dispute resolution under clause 44.

## 26.5 Good faith negotiations

As soon as practicable but no later than 20 Business Days after it has been agreed or determined that the notice under clause 26.2(a) is valid, the relevant Possible MAE Event has occurred, and that it has had, or has started to have, or will have, a Material Adverse Effect, the

parties must negotiate in good faith in an endeavour to agree on a method of redress which will achieve the relevant objectives referred to in clause 26.6.

## 26.6 Objectives of negotiations

- (a) **(Generally):** Subject to clause 26.6(b), the objectives of the negotiations will be to enable:
- (i) each PPP Co or FinCo to pay and repay to the Financiers the interest and principal payments (and net interest rate management agreement payments, if any) owing under the Debt Financing Facilities, on the dates on which such amounts are due to be paid or repaid thereunder (without regard to any acceleration of the obligation to repay); and
  - (ii) the Holding Entities to give to the Equity Investors (treated as if each was a Notional Initial Equity Investor) the lower of:
    - A. the Equity Return they would have received if the Possible MAE Event had not occurred; and
    - B. the Base Case Equity Return.
- (b) **(Prior inability to repay debt or give Base Case Equity Return):** If, prior to the occurrence of the Possible MAE Event:
- (i) the relevant PPP Co or FinCo was not able to pay or repay the Project Debt on the due dates for payment (without regard to any acceleration of the obligation to pay or repay); and
  - (ii) the Holding Entities were not able to give to the Equity Investors (treated as if each was a Notional Initial Equity Investor) the Base Case Equity Return,

then the objectives of the negotiations will be to enable them to have an equivalent ability to do so as it had prior to the occurrence of the Possible MAE Event.

## 26.7 Methods of redress

The parties must take a flexible approach in any negotiations under clause 26.6 and, subject to clause 26.8, must consider:

- (a) varying the Project Documents;
- (b) varying the Concession Period and the term of the Lease;
- (c) varying the financial or other contributions of the parties;
- (d) requesting that the Debt Financiers restructure the AL Project's financing arrangements;
- (e) varying the Tolls, User Charges and Administration Charges; and/or
- (f) taking such other action as the parties may agree.

## 26.8 Contribution is last resort

The method of redress involving a variation to the financial contribution of the State will be considered as a measure of last resort and will, unless the State requires otherwise, only apply

to the extent that the other methods of redress cannot reasonably be used so as to achieve the relevant objectives referred to in clause 26.6.

## 26.9 Disputes

- (a) **(Dispute resolution):** If the parties do not reach agreement on a method of redress so as to achieve the relevant objectives referred to in clause 26.6, within 90 Business Days after the State receives a valid notice under clause 26.2(a) then either party may refer the matter for dispute resolution under clause 44.
- (b) **(Methods of redress):** In making a determination, the expert or arbitrator must ensure, and the parties must require that, his or her determination as to any method of redress does not involve a method of redress other than those set out in clauses 26.7(a) to 26.7(e) without the parties' agreement, is consistent with clause 26.8, and is otherwise consistent with this clause 26.

## 26.10 No over compensation

The State will not be obliged under any circumstances, to make available or be bound by a method of redress to the extent that:

- (a) it will achieve an outcome in excess of that which is necessary to achieve the relevant objectives referred to in clause 26.6;
- (b) the applicable Possible MAE Event is caused, or contributed to, by a breach of a Project Document by a PPP Co, the State Works Contractor or the NB Works Contractor; or
- (c) any other reasonable payment, compensation or redress has been made by the State arising out of or in connection with the Possible MAE Event or the circumstances relating to the Possible MAE Event.

## 26.11 Implementation of redress

- (a) **(Efficient implementation):** Each PPP Co must ensure that any redress afforded under this clause 26 is efficiently applied and structured (so as, for example, not to create or increase any liability for Taxes, the liability for which need not be incurred or need only be incurred to a limited extent).
- (b) **(MAE must have commenced):** If a method of redress is agreed or determined on the basis that a Possible MAE Event will have, but has not had or started to have, a Material Adverse Effect, then no method of redress will be implemented before the Possible MAE Event has had or has started to have a Material Adverse Effect, unless the State directs otherwise.

## 26.12 Termination for Uninsurable Force Majeure Event

Notwithstanding any other provisions in this deed, at any time after the occurrence of an Uninsurable Force Majeure Event, the State may in its absolute discretion terminate this deed by giving a notice to that effect to each PPP Co after which this deed will be terminated and clause 41.7(b) will apply.

## 26.13 Negative Compensable Enhancement

If an event referred to in clause 26.1(a) or clause 26.1(b) has been notified by a PPP Co as a Negative Compensable Enhancement, that event can not be a Possible MAE Event.

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## 27. Force Majeure

### 27.1 Force Majeure Events

Each of the following events is a Force Majeure Event:

- (a) prior to the Tollroad Opening Date:
  - (i) lightning, earthquake, cyclone, natural disaster, landslide and mudslide;
  - (ii) explosion, malicious damage, sabotage, riots or a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this deed);
  - (iii) a flood which might at the date of this deed be expected to occur less frequently than once in every 50 years;
  - (iv) war, invasion, act of a foreign enemy, hostilities between nations (whether war be declared or not), civil war, rebellion, revolution or military or usurped power, martial law or confiscation by order of any Authority;
  - (v) toxic chemical contamination; or
  - (vi) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; and
- (b) on or after the Tollroad Opening Date:
  - (i) an event specified in clause 27.1(a); or
  - (ii) any other material event the risk of which is not otherwise specifically allocated in the State Project Documents,

which:

- (c) is beyond the reasonable control of the PPP Cos, the State Works Contractor, the NB Works Contractor and their respective Associates; and
- (d) prevents or delays the PPP Cos from performing an obligation under the State Project Documents (or prevents or delays the State Works Contractor from performing an obligation under the State Works Deed or prevents or delays the NB Works Contractor from performing an obligation under the NB Works Deed or the EWAG Works Deed), where that event or the consequence of that event:
  - (i) has not resulted from a PPP Co, the State Works Contractor or the NB Works Contractor breaching a term of the State Project Documents; and
  - (ii) could not have been prevented, avoided, remedied or overcome by the PPP Cos, the State Works Contractor, the NB Works Contractor or their respective Associates taking those steps which a prudent, experienced and competent concessionaire, designer, constructor or operator would have taken (including the expenditure of reasonable sums of money).

The parties acknowledge that clause 4.3 is not a specific allocation of risk for the purposes of clause 27.1(b)(ii).

## 27.2 Notification

- (a) **(Initial notice):** If the PPP Cos allege or wish to claim that a Force Majeure Event has occurred the PPP Cos must promptly give the State notice of the Force Majeure Event as soon as the PPP Cos become aware of the occurrence of the Force Majeure Event.
- (b) **(Particulars):** As soon as reasonably practicable after giving notice under clause 27.2(a), the PPP Cos must give the State (progressively if necessary) full particulars of all relevant matters pertaining to the Force Majeure Event including:
  - (i) the nature of the Force Majeure Event;
  - (ii) the obligations affected;
  - (iii) the action that the PPP Cos (or the State Works Contractor or the NB Works Contractor, as applicable) has taken and/or proposes to take to remedy the situation;
  - (iv) an estimate of the time during which the PPP Cos (or the State Works Contractor or the NB Works Contractor, as applicable) will be unable to carry out the affected obligations due to the Force Majeure Event;
  - (v) an estimate of the costs that the PPP Cos (or the State Works Contractor or the NB Works Contractor, as applicable) will incur to remedy the situation; and
  - (vi) all insurance moneys to which the PPP Cos (or the State Works Contractor or the NB Works Contractor, as applicable) believes it will be entitled in making good damage caused by the Force Majeure Event.
- (c) **(Continuing updates):** After giving notice under clauses 27.2(a) and 27.2(b), the PPP Cos must continue to keep the State informed of all relevant information pertaining to the Force Majeure Event.

## 27.3 Meeting

The parties must meet within 5 Business Days of service of a notice under clause 27.2(a) to determine:

- (a) whether a Force Majeure Event has occurred;
- (b) if the Force Majeure Event is covered by insurance and if so, to what extent; and
- (c) the estimated length of time for which the Force Majeure Event will continue.

## 27.4 Suspension of obligations

- (a) **(Suspension):** Subject to clause 27.4(b), if a Force Majeure Event occurs and the PPP Cos give notice under clause 27.2(a):
  - (i) the PPP Cos' obligations under the State Project Documents (other than this clause 27) (and the State Works Contractor's obligations under the State Works Deed and the NB Works Contractor's obligations under the NB Works Deed and the EWAG Works Deed, as applicable) which are affected by the Force Majeure Event will be suspended, but only to the

extent and for so long as those obligations are affected by the Force Majeure Event; and

- (ii) no default notice may be given under clause 41.2 in respect of a breach of any obligations which are suspended under clause 27.4(a)(i) during the period of suspension.
- (b) **(Traffic lanes):** Clause 27.4(a) will only apply to suspend TQ Operations' obligation under clause 19.3 to keep all traffic lanes of the Tollroad open where the occurrence of the Force Majeure Event prevents the safe passage of vehicles.
- (c) **(Recommencement):** Upon the PPP Cos, the State Works Contractor or the NB Works Contractor (as applicable) becoming able to recommence performing the obligations which were suspended under clause 27.4(a), the PPP Cos must recommence (and ensure that the State Works Contractor and the NB Works Contractor recommence, as applicable) the performance of those obligations.

## **27.5 Best endeavours to mitigate effect**

During the period of suspension, the PPP Cos (and the PPP Cos must ensure that the State Works Contractor does and the NB Works Contractor does, as applicable) must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event, including minimising the extent to which the PPP Cos' obligations under the State Project Documents are suspended. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

## **27.6 Alternative arrangements**

During the period of suspension, the State may make alternative arrangements for the performance of any suspended obligations (without incurring any liability to the PPP Cos).

## **27.7 Cessation of Force Majeure Event**

The PPP Cos must notify the State immediately after a PPP Co, the State Works Contractor and/or the NB Works Contractor, cease to be prevented or delayed from performing their respective obligations as a result of a Force Majeure Event.

## **27.8 No financial relief to the PPP Cos**

The State will not be obliged to:

- (a) provide any financial relief to the PPP Cos during the period of suspension; or
- (b) extend the Concession Period to take account of the period of suspension.

## **27.9 No compensation to the State**

The PPP Cos will not be liable to compensate the State for any costs or losses which the State incurs during the period of suspension.

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## 28. Property damage

### 28.1 Risk of loss or damage

Each PPP Co bears the risk of loss or damage to:

- (a) **(Project Works):** the Project Works (other than the Returned Works, EWAG and the Busway) during the D&C Phase;
- (b) **(Returned Works):** the Returned Works:
  - (i) from Financial Close until the date they are handed over to the relevant Facility Owner in accordance with this deed; and
  - (ii) after the date they are handed over to the relevant Facility Owner in accordance with this deed to the extent that the loss or damage arises out of or in connection with the Project Activities;
- (c) **(EWAG):** EWAG:
  - (i) from Financial Close until it is handed over to the State or BAC at the Date of EWAG Practical Completion; and
  - (ii) other than BAC EWAG, after it is handed over to the State to the extent that the loss or damage arises out of or in connection with the Project Activities;
- (d) **(Busway):** the Busway:
  - (i) from Financial Close until it is handed over at the Date of NB Practical Completion; and
  - (ii) after it is handed over to the State to the extent that the loss or damage arises out of or in connection with the Project Activities; and
- (e) **(Tollroad):** the Tollroad and the Maintained Non-Tollroad Works during the O&M Phase.

### 28.2 Reinstatement

- (a) **(Each PPP Co to make good):** Subject to clauses 28.2(c) and 28.3 of this deed, clause 21 (Uninsurable Force Majeure Events) of the EWAG Works Deed and clause 16 (Uninsurable Force Majeure Events) of the NB Works Deed, each PPP Co must promptly make good any loss or damage which occurs to any part of the Project Works, the Returned Works, EWAG, the Busway, the Tollroad or the Maintained Non-Tollroad Works during the period it bears the risk of loss or damage.
- (b) **(Specific steps):** Without limiting clause 28.2(a), the PPP Cos must:
  - (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
  - (ii) promptly consult with the State and carry out such steps as are necessary to ensure:

- A. the prompt repair and reinstatement of the loss or damage so that:
  - 1) it complies with the Performance Specification; and
  - 2) there is minimal disruption to the Project Works, the Returned Works, EWAG, the Busway, the Tollroad and the Maintained Non-Tollroad Works;
- B. to the greatest extent possible, each PPP Co continues to comply with its obligations under the Project Documents;
- (iii) manage all repair and replacement activities so as to minimise the impact on the Project Works, the Returned Works, EWAG, the Busway, the Tollroad or the Maintained Non-Tollroad Works;
- (iv) keep the State fully informed of the progress of the repair and reinstatement activities; and
- (v) subject to the Debt Finance Side Deed, apply all insurance proceeds in the repair or reinstatement of the Project Works, the Tollroad or the Maintained Non-Tollroad Works.
- (c) **(The State to apply proceeds):** In respect of the proceeds received by the State from the Insurances specified in clause 30.1(a) in respect of the NB Works or the EWAG Works:
  - (i) subject to clause 28.2(d), the State will pay those proceeds to the NB Works Contractor by progress payments under clause 14 (Payments) of the NB Works Deed or clause 19 (Payments) of the EWAG Works Deed as and when the NB Works Contractor repairs or reinstates the NB Works or the EWAG Works (as applicable); and
  - (ii) those proceeds will be the limit of the NB Works Contractor's entitlement to payment for repair or reinstatement of the loss or damage which occurs to the NB Works or the EWAG Works.
- (d) **(State elects not to apply proceeds):** If as a result of an event or series of related events, the State receives insurance proceeds in excess of \$30,000,000 in respect of loss of, or damage to, the NB Works, the EWAG Works or the Busway, then the State may elect not to pay the insurance proceeds to the NB Works Contractor and must direct the NB Works Contractor to decrease, delete, omit or remove the affected works from the NB Project Activities and the NB Works, or the EWAG Project Activities and the EWAG Works.
- (e) **(Modification Order):** Subject to clause 28.2(f), any direction under clause 28.2(d) will be treated as if it were a Modification the subject of a "Modification Order" by the State and clause 22.1 applied.
- (f) **(Mitigation):** Each PPP Co must:
  - (i) take all reasonable steps to mitigate the costs and expenses of the Modification referred to in clause 28.2(e);
  - (ii) for this purpose, comply with all reasonable directions of the State concerning the Modification; and

- (iii) ensure that the D&C Contractor complies with the requirements of this clause 28.2(f),

and the State's liability under clause 28.2(e) will be reduced to the extent the PPP Co fails to comply with these obligations.

### **28.3 Uninsurable Force Majeure Events**

If the loss or damage occurs as a result of an Uninsurable Force Majeure Event and clause 26.1(f) applies, each PPP Co's obligation to carry out repair and reinstatement is suspended until the parties have agreed an outcome in accordance with clause 26.5 or, if the parties are unable to come to an agreement, a determination, award or judgment has been made by:

- (a) an expert, that is not referred to arbitration under clause 44;
- (b) an arbitration (that is final and binding on the parties); or
- (c) a court
  - (i) from which no appeal can be taken and in respect of which no application for special leave to appeal can be made; or
  - (ii) in respect of which the relevant appeal or special leave application period has expired without an appeal being taken or an application for special leave to appeal being made.

### **28.4 Damage to third party property**

- (a) **(Each PPP Co to repair or compensate):** Without limiting clause 29, where any loss of or damage to real or personal property of third parties occurs which arises out of, or in any way in connection with:
  - (i) any failure by a PPP Co to comply with its obligations under this deed, that PPP Co must, at its cost, promptly repair any such loss or damage; and
  - (ii) the Project Activities or the Projects, the relevant PPP Co must, at its own cost, promptly repair such loss or damage (where that PPP Co has a legal liability to do so), or if the affected person agrees, reasonably compensate the affected person for that loss or damage (where that PPP Co has a legal liability to do so).
- (b) **(Step-in):** Without limiting clause 42, if a PPP Co fails to carry out any repair work or to pay reasonable compensation under clause 28.4(a), the State may carry out such work or pay any such reasonable compensation and any Loss incurred by the State will be a debt due and payable from that PPP Co to the State.

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## **29. Indemnities**

### **29.1 Indemnity for each PPP Co's breach**

Each PPP Co must indemnify the State against any Loss or Claim brought against, suffered or incurred by the State caused by, arising out of, or in any way in connection with, any breach by any Group Member of any provision of this deed or any other State Project Document.

**29.2 General indemnity**

Subject to clause 29.3, each PPP Co must indemnify the State against any Loss or Claim brought against, incurred or suffered by the State or its Associates in respect of:

- (a) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property (including property belonging to the State) and the Busway, EWAG and Returned Works after handover to the State or the applicable Facility Owner;
- (b) any injury to, disease or death of, persons; or
- (c) pure economic loss suffered by third parties,

caused by, arising out of, or in any way in connection with:

- (d) the Projects or the Project Activities;
- (e) the State's ownership of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas; or
- (f) the use or occupation of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas by a PPP Co or its Associates.

A PPP Co's obligation to indemnify the State under this clause 29.2 will be reduced to the extent that any wrongful act or omission by the State contributed to the Loss or Claim.

**29.3 Exclusion for certain third party claims**

Clause 29.2 does not apply in respect of any third party claim for pure economic loss to the extent the claim arises as a result of:

- (a) the decision by the State or the Council to proceed with the Projects; or
- (b) the existence or location of the Tollroad, EWAG or the Busway.

**29.4 Obligations not affected**

Clauses 29.1 and 29.2 do not lessen or otherwise affect a PPP Co's other obligations under this deed or any other State Project Document.

**29.5 Responsibilities as if owner**

The PPP Cos have the same responsibilities to third parties in respect of persons, property and all other aspects of the Projects which they would have if they held the freehold title to the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas.

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**30. Insurance**

**30.1 D&C Phase insurances**

As from Financial Close, each PPP Co must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 16:

- (a) **(Contract works):** Projects specific contract works or construction risks insurance:
  - (i) in respect of the Project Works and all things brought on to the Construction Site by that PPP Co or its Associates for the purpose of the D&C Activities, however, nothing in this clause requires the insurance to cover any risk occurring outside the Commonwealth of Australia; and
  - (ii) against physical damage, loss or destruction or such other risks as are reasonably required by the State;
- (b) **(Marine):** marine insurance in respect of relevant items to be employed about or used in the D&C Activities;
- (c) **(Third party liability):** project or Projects specific third party liability insurance covering claims in respect of:
  - (i) damage to, loss or destruction of, or loss of use of, real or personal property; and
  - (ii) injury to, or disease or death of, persons,
 arising out of or in connection with the D&C Activities;
- (d) **(Professional indemnity - AL Project):** AL Project specific professional indemnity insurance for any breach of a duty owed in a professional capacity by a PPP Co, the State Works Contractor, the D&C Contractor or their Joint Principal Design Engineer including coverage of their liability for anyone engaged by any of them in a professional capacity and having a retroactive date of the date that that PPP Co, the State Works Contractor, the D&C Contractor and their Joint Principal Design Engineer respectively or any person or entity engaged by them or who otherwise acted for them first commenced any professional activity in relation to the AL Works provided that in no event shall the retroactive date be later than the date which is 24 months prior to the date of Financial Close;
- (e) **(Professional indemnity - NB Project):** Professional indemnity insurance for any breach of a duty owed in a professional capacity by a PPP Co, the NB Works Contractor or the D&C Contractor including coverage of their liability for anyone engaged by any of them in a professional capacity and having a retroactive date of the date that that PPP Co, the NB Works Contractor and the D&C Contractor respectively or any person or entity engaged by them or who otherwise acted for them first commenced any professional activity in relation to the NB Works provided that in no event shall the retroactive date be later than the date which is 24 months prior to the date of Financial Close;
- (f) **(Professional indemnity - EWAG Project):** Professional indemnity insurance for any breach of a duty owed in a professional capacity by a PPP Co, the NB Works Contractor or the D&C Contractor including coverage of their liability for anyone engaged by any of them in a professional capacity and having a retroactive date of the date that that PPP Co, the NB Works Contractor and the D&C Contractor respectively or any person or entity engaged by them or who otherwise acted for them first commenced any professional activity in relation to the EWAG Works provided that in no event shall the retroactive date be later than the date which is 24 months prior to the date of Financial Close;
- (g) **(Employers' liability and workers' compensation):** employers' liability and workers' compensation insurance against any liability for death of, or injury to,

persons employed by that PPP Co or its Associates in carrying out the D&C Activities whether under statute or at common law;

- (h) **(Motor vehicle):** motor vehicle insurance covering third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used on any road and registered or required to be registered in accordance with any Law and used in connection with the D&C Activities;
- (i) **(Business interruption):** with respect to the AL Project, advance loss of profits insurance with respect to the risks of loss or damage to the property insured under clause 30.1(a) and delay in start up insurance with respect to the risks of loss or damage to the property insured under clause 30.1(b); and
- (j) **(Directors and officers):** directors and officers liability insurance for the PPP Cos, the State Works Contractor and the NB Works Contractor having retroactive dates of the dates of incorporation of the PPP Cos, the State Works Contractor and the NB Works Contractor respectively.

### 30.2 O&M Phase insurances

From the Date of Tollroad Completion, the PPP Cos must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 16:

- (a) **(Industrial special risks):** industrial special risks insurance covering the Tollroad and the Maintained Non-Tollroad Works, against physical damage, loss or destruction and such other risks as reasonably required by the State from time to time;
- (b) **(Third party liability):** business specific third party liability insurance covering claims in respect of:
  - (i) damage to, loss or destruction of, or loss of use of, real or personal property; and
  - (ii) injury to, or disease or death of, persons,arising out of or in connection with the O&M Activities;
- (c) **(Employers' liability and workers' compensation):** employers' liability and workers' compensation insurance against liability for death of, or injury to, persons employed by TQ Operations or its Associates in carrying out the O&M Activities, whether under statute or at common law;
- (d) **(Motor vehicle):** motor vehicle insurance covering third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used on any road and registered or required to be registered in accordance with any Law and used in connection with the O&M Activities;
- (e) **(Business interruption):** business interruption insurance;
- (f) **(Directors and officers):** directors and officers liability insurance; and

- (g) **(Other):** any other insurances which the State reasonably requires and which are commonly effected by land owners, lessees or contractors in the position of the relevant PPP Co provided those insurances can be obtained on payment of a reasonable premium.

### 30.3 Periods of insurance

The relevant PPP Co must maintain (or cause to be maintained):

- (a) the professional indemnity insurance referred to in clause 30.1(d) until the date which is 6 years after the Date of Tolling System Completion;
- (b) the professional indemnity insurance referred to in clause 30.1(e) until the date which is 6 years after the Date of NB Practical Completion;
- (c) the professional indemnity insurance referred to in clause 30.1(f) until the date which is 6 years after the Date of EWAG Practical Completion;
- (d) the directors and officers liability insurance referred to in clause 30.1(j) until the Date of Tollroad Completion;
- (e) the advance loss of profits insurance and the delay in start up insurance referred to in clause 30.1(i) until the Date of Tolling System Completion;
- (f) the other D&C Phase Insurances until the Last DLP; and
- (g) the O&M Phase Insurances until the end of the Concession Period.

### 30.4 General insurance requirements

All Insurances:

- (a) **(insurers):** must be effected with Reputable Insurers or insurers approved by the State;
- (b) **(terms):** must:
  - (i) in the case of the D&C Phase Insurances, be on the terms required by this clause 30 and Exhibit C or otherwise as approved by the State; and
  - (ii) in the case of the O&M Phase Insurances, be on the terms required by this clause 30 and otherwise as approved by the State (which approval will not be unreasonably withheld);
- (c) **(exclusions):** must not contain any exclusion, endorsement or alteration, unless it is first approved in writing by the State;
- (d) **(joint names):** except for:
  - (i) the professional indemnity insurance referred to in clauses 30.1(d), 30.1(e) and 30.1(f);
  - (ii) the employers' liability and workers' compensation insurance policies referred to in clauses 30.1(g) and 30.2(c);
  - (iii) the motor vehicle insurance covering third party death and injury to persons referred to in clauses 30.1(h) and 30.2(d); and

- (iv) the directors and officers liability insurance referred to in clauses 30.1(j) and 30.2(f),

must be in the joint names of the PPP Cos and the State and:

- (v) such others as have an insurable interest under the Project Documents; and
- (vi) as regards to the third party liability insurance referred to in clause 30.1(c) and 30.2(b) for claims arising out of or in connection with the D&C Activities and the O&M Activities, and any State government owned corporation (as owners of any of the land the subject of the access licence described in clause 4 (Access) of the Agreement to Lease,

for their respective rights, interests and liabilities;

- (e) **(waiver and cross liability clause):** which name more than one insured must include a waiver and cross liability clause in which the insurer agrees:

- (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
- (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
- (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;

- (f) **(prior notice):** except for:

- (i) the employers' liability and workers' compensation insurance policies referred to in clause 30.1(g); and
- (ii) the motor vehicle insurance covering third party death and injury to persons referred to in clauses 30.1(h) and 30.2(d),

must contain a term which requires the insurer to give the State 20 Business Days notice prior to:

- (iii) the insurer giving a PPP Co a notice of cancellation;
- (iv) the insurer cancelling the policy on the request of a PPP Co;
- (v) a PPP Co allowing the policy to expire; or
- (vi) the insurer giving a PPP Co any other notice in respect of the policy;

- (g) **(loss payee):** in the case of the Insurances specified:

- (i) in:
  - A. clause 30.1(a), in respect of the AL Works, must specify each PPP Co, the State Works Contractor, the State and the D&C Contractor; and

B. clauses 30.2(a) and 30.2(e), must specify each PPP Co and the State,

as joint loss payees;

(ii) in clause 30.1(a), in respect of the NB Works or the EWAG Works, must specify the State as the loss payee; and

(iii) in clause 30.1(a), in respect of all things brought on to the Construction Site by a PPP Co or its Associates for the purpose of the D&C Activities, must specify the State and the D&C Contractor as the loss payee;

(h) **(reinstatement):** except in the case of the Insurances specified in clauses 30.1(g), 30.1(h) and 30.1(j) and clauses 30.2(c), 30.2(d) and 30.2(f) must be endorsed to note and allow a PPP Co's obligations under clause 28.2, to the effect that compliance by that PPP Co with the provisions of that clause will not prejudice that PPP Co's or any other insured parties' rights to indemnity under the Insurances; and

(i) **(loss adjuster):** except in the case of the Insurances specified in clauses 30.1(c), 30.1(d), 30.1(e), 30.1(f), 30.1(g), 30.1(h) and 30.1(j) and the O&M Phase Insurances, must be endorsed to note a loss adjuster approved by the State (such approval not to be unreasonably withheld) must be appointed to adjust any and all losses notified under the Insurances.

### **30.5 Premiums**

Each PPP Co must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give the State copies of receipts for payment of premiums if and when requested by the State.

### **30.6 Evidence of insurance**

Each PPP Co must give the State:

(a) certified copies of all:

(i) policies;

(ii) renewal certificates; and

(iii) endorsement slips,

as soon as it receives them from the insurer; and

(b) evidence satisfactory to the State that the Insurances have been effected and maintained, whenever reasonably requested by the State.

### **30.7 Failure to produce evidence of insurance**

If a PPP Co fails to provide evidence satisfactory to the State within 10 days of a request under clause 30.6(b), the State may effect and maintain the relevant Insurances and pay the premium. The costs incurred by the State in connection with taking such action will be recoverable from the relevant PPP Co as a debt due and payable from the relevant PPP Co to the State.

### **30.8 Each PPP Co's obligations not limited**

The effecting of Insurances does not limit the liabilities or obligations of each PPP Co under this deed.

### 30.9 General insurance obligations

Each PPP Co must:

- (a) not do or permit, or omit to do, anything which prejudices any Insurance;
- (b) rectify anything which might, if not rectified, prejudice any Insurance;
- (c) reinstate an Insurance if it lapses;
- (d) not cancel, vary or allow any Insurance to lapse without the prior written consent of the State;
- (e) immediately notify the State of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances (whether held solely or jointly with others) in all respects, including where failure to do so would violate or invalidate the relevant policy; and
- (g) comply at all times with the terms of each Insurance.

### 30.10 Uninsurable risks

A PPP Co need not effect or maintain a particular insurance under clause 30.1 or clause 30.2 to the extent that, and only for so long as:

- (a) the insurance is not available with any Reputable Insurer; or
- (b) the insurance premium payable for the insurance is at such a level or the terms and conditions are such that a reputable insurance broker acceptable to the parties certifies that in its reasonable opinion the risk is not generally being insured against with Reputable Insurers by prudent, competent and experienced concessionaires, designers, contractors and/or operators (as applicable) of tollroads or busways (as applicable).

### 30.11 Review of O&M Phase insurances

- (a) **(5 yearly reviews):** the State and TQ Operations will meet:
  - (i) 6 months prior to the expected date of Tollroad Completion; and
  - (ii) 6 months prior to every 5th anniversary of the Date of Tollroad Completion,

(each an "**Insurance Review Commencement Date**") to review the minimum limits of liability, sub-limits of liability and deductibles for the O&M Phase Insurances which must be effected and/or maintained during the ensuing 5 year period with a view to reaching agreement upon the limits, sub-limits and deductibles which will apply during that ensuing 5 year period.

- (b) **(If parties reach agreement):** To the extent that the State and TQ Operations are able to reach agreement within 2 months after the Insurance Review Commencement Date on the limits, sub-limits and deductibles to apply during the ensuing 5 year period, TQ Operations must, from the commencement and for the duration of the relevant 5 year period, cause the relevant limits, sub-limits and deductibles to be adjusted to those agreed.

- (c) **(If parties do not reach agreement):** To the extent that the State and TQ Operations are unable to reach agreement within 2 months after the Insurance Review Commencement Date then:
- (i) those limits, sub-limits and deductibles which have not been agreed will be referred for dispute resolution in accordance with clause 44;
  - (ii) if the relevant limits, sub-limits and deductibles have not been agreed or determined pursuant to the dispute resolution process before the commencement of the relevant 5 year period, then TQ Operations must, pending the outcome of the dispute resolution process, cause the then current levels of the relevant limits, sub-limits and deductibles to be adjusted in accordance with increases in the CPI from the date the relevant limit, sub-limit or deductible was last seen or adjusted; and
  - (iii) as soon as practicable after the outcome of the dispute resolution process (and notwithstanding any decision to appeal any determination of the arbitrator), TQ Operations must cause the relevant limits, sub-limits and deductibles to be adjusted to those agreed or determined pursuant to the dispute resolution process, for the balance of the relevant 5 year period.
- (d) **(Relevant factors):** The State and TQ Operations agree that the limits, sub-limits and deductibles are to be agreed or determined (as the case may be) having regard to:
- (i) the nature of the AL Project;
  - (ii) the insurances which TQ Operations has effected, or caused to be effected, at that time and the risks covered under those insurances;
  - (iii) the risks sought to be insured;
  - (iv) the risks which a prudent insured would seek to insure;
  - (v) the terms on which insurance is available;
  - (vi) the commercial reasonableness of those terms;
  - (vii) the insurances and risk management practices generally applying in the tollroad industry; and
  - (viii) any other factors which the State and TQ Operations may agree to be appropriate.

### 30.12 Insurance proceeds

- (a) **(Establish account):** Each PPP Co must:
- (i) establish an account to be known as the Insurance Proceeds Account;
  - (ii) maintain that account in the name of that PPP Co with a financial institution nominated by that PPP Co and approved by the State (such approval not to be unreasonably withheld) or with a financial institution which is a party to the Debt Finance Side Deed;
  - (iii) give details of that account to the State;

- (iv) notify the financial institution referred to in clause 30.12(a)(ii) of the charge over the Insurance Proceeds Account in accordance with the State Security and procure, and copy the State with, acknowledgment of that notice from the financial institution; and
  - (v) procure the agreement of the financial institution referred to in clause 30.12(a)(ii) not to exercise any right of set off or combination of accounts in relation to the Insurance Proceeds Accounts.
- (b) **(Deposit insurance proceeds):** Each PPP Co and the State must deposit all insurance moneys received under the contract works policy with respect to the AL Works and the industrial special risks policy into the Insurance Proceeds Account.
  - (c) **(Application of moneys):** Subject to the Debt Finance Side Deed, moneys in the Insurance Proceeds Account may only be applied towards the repair or reinstatement of the Project Works, the Tollroad and the Maintained Non-Tollroad Works.
  - (d) **(Records):** Each PPP Co must give the State records of expenditure from the Insurance Proceeds Accounts within 45 days of such expenditure.
  - (e) **(Surplus funds):** Any funds remaining in the Insurance Proceeds Account after application in accordance with clause 30.12(c) will be treated by a PPP Co as revenue from the AL Project.

### 30.13 Notices of potential claims

In addition to the obligations to notify the insurer under any Insurance, each PPP Co must:

- (a) notify the State of any occurrence that may give rise to a claim under any Insurance;
- (b) keep the State informed of subsequent developments concerning the claim;
- (c) subject to clause 30.13(d), diligently pursue any claim which it has under any Insurance; and
- (d) not compromise, settle, prosecute or enforce a claim under any Insurance without the prior written consent of the State (which must not be unreasonably withheld or delayed), except in relation to the Insurances referred to in clauses 30.1(g) and 30.1(h).

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## 31. Representations and warranties

### 31.1 State representations and warranties

The State represents and warrants for the benefit of each PPP Co that:

- (a) **(Power):** it has the power to execute, deliver and perform its obligations under the State Project Documents and all necessary action has been taken to authorise their execution, delivery and performance;
- (b) **(Legally binding obligation):** each State Project Document constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (c) **(Execution, delivery and performance):** the execution, delivery and performance of each State Project Document does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets.

## 31.2 PPP Cos' representations and warranties

Each PPP Co represents and warrants for the benefit of the State that:

- (a) **(Existence):** it is duly registered and remains in existence;
- (b) **(Execution, delivery and performance):** the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(Due authority):** it has taken all corporate and other action required to enter into any Project Document to which it is a party and to authorise the execution and delivery of that Project Document and the satisfaction of its obligations under it;
- (d) **(Legally binding obligation):** each Project Document to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) **(Properly constituted):** each PPP Co subsists and is properly constituted;
- (f) **(No trusts):** except as stated in this deed, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;
- (g) **(No Subsidiaries):** it has no subsidiaries;
- (h) **(Tax consolidation arrangements):** it is not part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) except with the consent of the State;
- (i) **(No default):** it is not in default of its material obligations under any State Project Document;
- (j) **(No trading or liabilities):** it has not traded since its incorporation other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen in connection with entering into the Project Documents;
- (k) **(Ranking of obligations):** except as contemplated by the Debt Finance Side Deed, its obligations under the State Security will rank ahead of, and its obligations under each State Project Document (other than the State Security) will rank at least equally with, all its other present and future unsecured obligations, other than in respect of Taxes and employees' remuneration which are accorded statutory priority;
- (l) **(No immunity):** it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (m) **(No litigation etc):** no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business assets or financial condition;
- (n) **(No change in financial condition):** there has been no material change in the financial condition of that PPP Co (since its incorporation) or any other Group Member, the Equity Investors, the D&C Contractor or the O&M Contractor (since the date of their last audited accounts) which would prejudice the ability of that PPP Co to perform its obligations under the Project Documents;

- (o) **(Financial statements):** the most recently published financial statements of the Equity Investors, the D&C Contractor or the O&M Contractor have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Equity Investors, the D&C Contractor or the O&M Contractor;
- (p) **(Other facts or circumstances):** that PPP Co is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with that PPP Co; and
- (q) **(Provided finance documents):** it has provided to the State all documents to which it is a party, or which are in its possession, relating to any Distribution to any Equity Investor, any syndication of the Debt Financing Facilities or any Refinance of the Project Debt.

### 31.3 TQ Trustee representations and warranties

TQ Trustee (both in its own right and in its capacity as trustee of the TQ Asset Trust) makes the following continuing representations and warranties for the benefit of the State:

- (a) it has power:
  - (i) to enter into and perform those Project Documents to which it is expressed to be a party in its capacity as trustee of the TQ Asset Trust;
  - (ii) to carry out the transactions that those Project Documents contemplate; and
  - (iii) to own the assets, undertakings and rights both present and future, of the TQ Asset Trust,

and there is no restriction on or condition of it doing so;
- (b) the TQ Asset Trust has been validly created and is in existence at the Acquisition Date;
- (c) it has been validly appointed as trustee of the TQ Asset Trust and is presently the sole trustee of that trust and no action has been taken to remove it or appoint an additional trustee of the TQ Asset Trust;
- (d) the TQ Asset Trust is solely constituted by the TQ Asset Trust Deed, a true and complete copy of which was provided to the State before the Acquisition Date;
- (e) the TQ Asset Trust has not been terminated, nor has any event for the vesting of the assets of that trust occurred;
- (f) no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the TQ Asset Trust or on its trusteeship of that trust;
- (g) no property of the TQ Asset Trust has been re-settled, set aside or transferred to any other trust;
- (h) it is to the commercial benefit of the TQ Asset Trust and the beneficiaries of the TQ Asset Trust that it:

- (i) enters into the Project Documents to which it is expressed to be a party in its capacity, inter alia, as trustee of the TQ Asset Trust; and
- (ii) charges the property of the TQ Asset Trust as provided in those Project Documents;
- (i) as trustee of the TQ Asset Trust, it has valid rights of indemnity and exoneration against the assets of the TQ Asset Trust, which rights are available for the satisfaction of all liabilities and other obligations incurred by it under the Project Documents;
- (j) its right of indemnity out of, and lien over the assets of the TQ Asset Trust have not been limited, released or disposed of other than under the State Security or the Debt Financing Documents in any way and without limitation, TQ Trustee has no material liability which may be set off against the right of indemnity;
- (k) the rights of any beneficiaries relating to, and their interests in, the property of the TQ Asset Trust are subject to the prior rights and interests of:
  - (i) the State under the State Project Documents; and
  - (ii) TQ Trustee in the property of the TQ Asset Trust to which the State may from time to time be subrogated;
- (l) the TQ Asset Trust Deed complies with all applicable laws; and
- (m) it has complied with its obligations and duties as trustee under the TQ Asset Trust Deed and at law and no one has alleged to it that it has not so complied.

### **31.4 Repetition of representation and warranties**

Except for the representations and warranties contained in clauses 31.2(h), 31.2(i), 31.2(j), 31.2(n), 31.2(o) and 31.2(p), each representation and warranty contained in this deed:

- (a) is made on the Acquisition Date; and
- (b) will be deemed to be repeated each day after the Acquisition Date during the Concession Period,

with reference to the facts and circumstances then subsisting.

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## **32. Each PPP Co to inform itself**

### **32.1 No representations from the State**

Each PPP Co acknowledges and agrees that, except as expressly set out in this deed, the State has not made and makes no representation, and gives no warranty, in respect of:

- (a) any of the Project Documents;
- (b) any transaction or arrangement contemplated under any Project Document;
- (c) the traffic usage of the Tollroad; or
- (d) any other matter relevant to that PPP Co's decision to enter into the Project Documents.

**32.2 Warranties by each PPP Co**

- (a) Each PPP Co warrants that it has done, and will be deemed to have done, everything which would be expected of a road and road tunnel concessionaire using D&C Best Practices and O&M Best Practices and using suitable technology and methodology in:
  - (i) assessing the risks which it is assuming under this deed; and
  - (ii) accepting and dealing with those risks.
  
- (b) Without limiting clause 32.2(a), each PPP Co warrants that prior to the date of this deed it:
  - (i) examined the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas and their surroundings and has done everything possible to inform itself sufficiently as to site conditions;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its proposal for the Projects and its obligations under the State Project Documents;
  - (iii) satisfied itself as to the correctness and sufficiency of its proposal and that it has made adequate allowance for the costs of complying with all the obligations of the State Project Documents and of all matters and things necessary for the due and proper performance and completion of the Project Activities;
  - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters relevant to the Project Areas and the Project Activities; and
  - (v) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - A. relating to the subject matter of any Project Information; and
    - B. for design purposes and otherwise,

and for this purpose was given access to such parts of the Licensed Construction Areas, the Leased Area and the Licensed Maintenance Areas as it required.

**32.3 Project Information**

Without limiting clause 32.1 or clause 32.4 or the warranties or acknowledgements in the Deeds of Disclaimer, each PPP Co:

- (a) acknowledges and agrees that:
  - (i) the Existing Project Information was provided by the State; and
  - (ii) any Future Project Information will be provided by the State,for the information only of each PPP Co;
  
- (b) warrants that it has not in any way relied upon:

- (i) the Existing Project Information; or
- (ii) the accuracy, adequacy, suitability or completeness of the Existing Project Information,

for the purposes of entering into this deed;

- (c) warrants that it will not rely upon:

- (i) the Future Project Information; or
- (ii) the accuracy, adequacy, suitability or completeness of the Future Project Information,

for the purpose of performing the Project Activities;

- (d) acknowledges and agrees that:

- (i) the State (or anyone on its behalf) has not and does not warrant, guarantee, assume any duty of care or other responsibility for, or make any representation about, the accuracy, adequacy, suitability or completeness of the Project Information;
- (ii) the Project Information does not form part of this deed; and
- (iii) insofar as is permitted by law, the State will not be liable upon any Claim by a PPP Co arising out of or in any way in connection with:
  - A. the Project Information; or
  - B. a failure by the State to provide any information to a PPP Co.

## **32.4 Non reliance**

Each PPP Co:

- (a) warrants that it did not in any way rely upon:

- (i) any information, data, representation, statement or document made, or provided to a PPP Co, by the State or anyone on behalf of the State or any other information, data, representation, statement or document for which the State is responsible or may be responsible whether or not obtained from the State or anyone on behalf of the State; or
- (ii) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this deed;

- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and

- (c) acknowledges that it is aware that the State has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 32.1, 32.2, 32.3, 32.4(a) and 32.4(b) and in the Deeds of Disclaimer.

## 32.5 Release and indemnity

Each PPP Co releases and indemnifies the State from and against:

- (a) any Claim against the State by, or liability of the State to, any person; or
- (b) without being limited by clause 32.5(a), any Loss suffered or incurred by the State, arising out of or in any way in connection with:
  - (c) the provision of, or the purported reliance upon, or use of, the Project Information by a PPP Co, an Associate of a PPP Co or any other person to whom the Project Information is disclosed by a PPP Co, an Associate of a PPP Co or any person on a PPP Co's or the Associate's behalf;
  - (d) any breach by a PPP Co of this clause 32; or
  - (e) the Project Information being relied upon or otherwise used by a PPP Co, an Associate of a PPP Co or any other person to whom the Project Information is disclosed by a PPP Co, an Associate of a PPP Co or any person on a PPP Co's or the Associate's behalf in the preparation of any information or document, including any Project Information which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 52 and 53 (respectively) of the *Trade Practices Act 1974* (Cth) or any equivalent provision of state or territory legislation).

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## 33. Restrictions on each PPP Co

### 33.1 Restrictions on Business

Each PPP Co must not conduct any business other than the Projects and the carrying out of its obligations and the exercise of its rights under the Project Documents without the State's prior consent.

### 33.2 Restrictions on acquisition of property and liabilities being incurred

Each PPP Co must not acquire or hold any property or incur any liability other than for the purposes of the Projects without the State's prior consent.

### 33.3 Ring fencing

- (a) **(Prohibition against transactions with Associates):** Each PPP Co must not:

- (i) enter into contracts with;
- (ii) assume or permit to subsist any liability in favour of; or
- (iii) buy, sell or dispose of assets to,

the State Works Contractor, the NB Works Contractor, the D&C Contractor, the O&M Contractor, the Equity Investors or any of their respective Associates without the State's prior consent.

- (b) **(Consent where transactions on arm's length terms):** The State must not unreasonably withhold its consent if the contract, liability, purchase or disposal of assets referred to in clause 33.3(a) is on arm's length commercial terms.

- (c) **(Tax consolidation):** Each PPP Co must not engage in any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth) without the State's prior consent.

### **33.4 Plant and equipment**

- (a) **(Plant and equipment):** Subject to clause 33.4(b), the PPP Cos must ensure that all of its plant, systems, hardware, software and other assets and property comprised or used in, or for the purposes of, the Tollroad, EWAG or the Busway will be either:
  - (i) owned by the PPP Cos; or
  - (ii) the subject of an agreement (such as a lease or hire purchase agreement):
    - A. under which it has the right to acquire ownership of them for nominal cost at the end of the term of the agreement;
    - B. which includes a right for it to assign and novate its rights and obligations under the agreement to the State (or its nominee) prior to the end of the term of that agreement or on termination of this deed;
    - C. which will not terminate, be suspended or impose more onerous terms on the PPP Cos or the State if the State were to exercise any of its rights under the Project Documents; and
    - D. which allows the security to be taken over it.
- (b) **(Third Party Intellectual Property Rights):** Clause 33.4(a) does not apply to those Intellectual Property Rights in or used in the Tollroad Systems which are Third Party Intellectual Property Rights and which are either:
  - (i) licensed to the State pursuant to clauses 2.1 (Grant of licence for AL Project purposes) and 2.2 (Grant of licence for other purposes) of the IP Licence Deed; or
  - (ii) approved by the State as excluded "Third Party Material" for the purposes of clause 3.1 (Approval) of the IP Licence Deed.

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## **34. Assignment**

### **34.1 Assignment by a PPP Co**

Except as expressly permitted by this deed, the Debt Finance Side Deed or the State Security, each PPP Co must not assign, novate, transfer, mortgage, charge or otherwise deal with its interest in, or obligations under, any of the Project Documents, without the State's prior approval (which must not be unreasonably withheld).

### **34.2 Debt Financier's Securities**

Each PPP Co may, after execution of the Debt Finance Side Deed, mortgage or charge its interest under the Project Documents to secure its obligations to any Debt Financier (or the trustee or agent for any Debt Financier) under the Debt Financing Documents, if, and for so long only as, the Debt Financier (or the trustee or agent for any Debt Financier) is a party to the Debt Finance Side Deed.

### 34.3 Restrictions on sale, lease and parting with possession

A PPP Co must not:

- (a) create or allow to exist any security interest over; or
- (b) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with,

the whole or any part of the Licensed Construction Areas, the Leased Area, the Licensed Maintenance Areas or the Tollroad, except as expressly permitted under this deed, the Debt Finance Side Deed or the Debt Financing Documents or as otherwise approved by the State.

### 34.4 Assignment by the State

- (a) **(No assignment without consent):** Subject to clause 34.4(b), the State may not sell, transfer or assign or otherwise dispose of its interest in the Project Documents without the prior written consent of the PPP Cos.
- (b) **(Assignment of revenue rights):** The State may assign any of its rights under the Project Documents to receive revenue.
- (c) **(Where consent to be given):** A PPP Co must give its consent under clause 34.4(a) if:
  - (i) it has been provided with written details of the proposed transferee and the terms and conditions of the proposed transfer;
  - (ii) the proposed transferee is an Authority and has the requisite power and financial capability to comply with the State's obligations under the relevant Project Documents; and
  - (iii) the proposed transferee has agreed to be bound by the relevant Project Documents.

### 34.5 Initial status of ownership

Each PPP Co represents and warrants that as at the Acquisition Date:

- (a) all of the units in TQ Asset Trust will be indirectly wholly owned by TQ Invest Trust Co as trustee for the TQ Invest Trust;
- (b) TQ Operations will be directly wholly owned by TQ Holding Co and indirectly wholly owned by Transurban Queensland Holdings 1 Pty Ltd ACN 169 090 804;
- (c) TQ Trustee will be wholly owned by TQ Invest Trust Co as trustee for the TQ Invest Trust; and
- (d) the PPP Cos have not issued or agreed to issue any additional share capital or units in the TQ Asset Trust, TQ Trustee or TQ Operations, except for share capital or units which will be indirectly wholly owned by a Holding Entity.

### 34.6 Restrictions on Share Capital Dealings

Subject to clause 34.8, each PPP Co undertakes not to:

- (a) at any time after the Acquisition Date:

- (i) redeem, repurchase, defuse, retire or repay any share capital or units in a PPP Co or the TQ Asset Trust (other than for the purpose of making a Distribution permitted by the Debt Financing Documents) or resolve to do so;
  - (ii) issue any share capital or units in either of the PPP Cos or the TQ Asset Trust;
  - (iii) issue or agree to issue any warrants or options over any unissued share capital or units in either of the PPP Cos or the TQ Asset Trust;
  - (iv) permit or suffer any change to (or transfer of, the share capital or units in) the PPP Cos or the TQ Asset Trust which results in a PPP Co ceasing to be directly and beneficially wholly owned and controlled by the Holding Entities;
- (b) allow a Holding Entity, at any time after the Acquisition Date, to:
- (i) redeem, repurchase, defuse, retire or repay any units or share capital in a Holding Entity (other than for the purpose of making a Distribution equivalent to a Distribution which was permitted under clause 34.6(a)(i)), or resolve to do so;
  - (ii) issue any units or share capital in a Holding Entity;
  - (iii) issue or agree to issue any warrants or options over any unissued units or unissued share capital in a Holding Entity;
  - (iv) permit or suffer any change (or transfer of), the issued units or share capital in a Holding Entity which changes the percentage of issued units or issued share capital owned (legally and/or beneficially) by the Equity Investors; or
  - (v) permit the transfer of unitholder or shareholder loans (or other loans in the nature of equity funding) from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;
- (c) at any time after the Acquisition Date, permit or suffer any act, matter or thing which causes:
- (i) the redemption, repurchase, defusion, retirement or repayment of any share capital in FinCo or a resolution to do so;
  - (ii) the issuance of any share capital in FinCo;
  - (iii) the issuance or any agreement to issue any warrants or options over any unissued share capital in FinCo; or
  - (iv) any change to (or transfer of the share capital in) FinCo which results in FinCo ceasing to be directly and beneficially wholly owned and controlled by a Holding Entity; or
- (d) permit or suffer any change to (or transfer of the share capital or units in) the ultimate holding company (as defined in the Corporations Act) of, or the ultimate holding trust of, or the ultimate holder of the entire limited partners' interest in an Equity Investor which results in:
- (i) a change in Control of the PPP Cos; or

- (ii) an entity becoming a Controlling Unit Holder of the PPP Cos; or
- (iii) a change in the Controlling Unit Holder of the PPP Cos; or

other than as a result of the acquisition of securities which are publicly listed on a stock exchange.

(each a "Share Capital Dealing") without the State's prior consent.

### **34.7 The State's right to withhold consent**

- (a) Subject to clauses 34.7(b) and 34.8, the State may only withhold its consent to a proposed Share Capital Dealing if the State is of the reasonable opinion that:
  - (i) the new Equity Investor or Equity Investors (or any direct or indirect Holding Company of the new Equity Investor or Equity Investors):
    - A. is or are not solvent and reputable; or
    - B. has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State; or
  - (ii) the proposed Share Capital Dealing:
    - A. is against the public interest;
    - B. would adversely affect the ability or capability of the relevant PPP Co to perform its obligations under any Project Document;
    - C. would have a material adverse affect on the Projects;
    - D. would increase the liability of, or risks accepted by, the State under the State Project Documents or in any other way in respect of the Projects; or
    - E. would negatively impact upon the State's commercial position under the State Project Documents or in any other way in respect of the Projects.
- (b) Subject to clause 34.8, the State's consent to a Share Capital Dealing, other than a Share Capital Dealing referred to in:
  - (i) clause 34.6(b) that is in relation to units or share capital issued in or by a Holding Entity which are publicly listed on a stock exchange; and
  - (ii) clause 34.6(d),

may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit if the Share Capital Dealing will occur during the period commencing on the date of this deed and ending on the date that is 2 years after the Date of Tollroad Completion.

### **34.8 Permitted Share Capital Dealing**

A PPP Co may effect a Permitted Share Capital Dealing at any time during the Concession Period without the State's prior consent, provided that for a Permitted Share Capital Dealing which is not constituted by the acquisition of securities which are listed on a stock exchange

that PPP Co informs the State of the Permitted Share Capital Dealing as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Share Capital Dealing.

### **34.9 Consent**

The State must advise the relevant PPP Co, within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) of receiving that PPP Co's request for consent pursuant to clause 34.6, that:

- (a) it consents to the Share Capital Dealing;
- (b) subject to clause 34.7, the Share Capital Dealing is unacceptable to it and (except where clause 34.7(b) applies), the reasons why the Share Capital Dealing is unacceptable; or
- (c) it requires further information from the relevant PPP Co regarding the Share Capital Dealing. If so, that PPP Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 34.9(a) or clause 34.9(b) within 10 Business Days.

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## **35. Amendments to Project Documents**

### **35.1 The State's consent required**

A PPP Co may not at any time after the execution of this deed:

- (a) make or permit any amendment to, replacement of or waiver of a provision of;
- (b) terminate, surrender, rescind or accept repudiation of;
- (c) permit the novation, assignment or substitution of any counterparty's rights, obligation or interest in; or
- (d) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Document (each an "**Amendment**" for the purposes of this clause 35) without the State's prior consent.

### **35.2 Notice of intended Amendment**

If a PPP Co desires an Amendment, it must submit to the State a written request seeking its consent. In such request, the PPP Co must set out:

- (a) the Amendment and the reasons for it;
- (b) the response or anticipated response of any other party to the Project Documents regarding the Amendment;
- (c) the response or anticipated response of any assignee of the Project Documents to the Amendment; and
- (d) copies of any documents relevant to the PPP Co's request.

### **35.3 The State's consent**

- (a) The State must advise the PPP Co, within 10 Business Days of receiving its written request under clause 35.2 that:
  - (i) it consents to the Amendment;
  - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
  - (iii) it requires further information from the PPP Co regarding the Amendment. If so, the PPP Co must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of clause 35.3(a)(i) or clause 35.3(a)(ii).
- (b) If the State fails to respond for any reason within the period specified by clause 35.3(a) in relation to an Amendment in respect of a Project Document which is not a State Project Document, the PPP Co may send a reminder notice. If that notice is not responded to within 7 Business Days, the State will be deemed to have given its consent to such Amendment.

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## **36. Refinancings**

### **36.1 Restriction on refinancing**

Each PPP Co must not, and must ensure that FinCo does not, Refinance all or any part of the Actual Debt otherwise than with the prior consent of the State under clause 36.4.

### **36.2 Initial information**

In the period when a Refinancing is being developed and before a notice is given under clause 36.3, the PPP Cos must provide the State with notice as soon as reasonably practicable (and in any event not less than 10 Business Days before the PPP Cos submit a notice under clause 36.3) that a Refinancing is being developed together with copies of working draft term sheets, models and other material information relevant to the Refinancing progressively and as soon as practicable after they are produced or updated by or made available to a PPP Co or any person negotiating or developing the Refinancing on behalf of it.

### **36.3 Notice of intended Refinancing**

If a PPP Co or FinCo intends to undertake any Refinancing, the PPP Cos must submit a notice to the State seeking its consent at least 30 Business Days prior to the Refinancing. In that notice, the PPP Cos must set out:

- (a) full details as to the terms of the proposed Refinancing (including copies of all relevant draft contractual and security documentation in the form proposed to be signed by all relevant parties);
- (b) its good faith and detailed view of the impact or potential impact of the proposed Refinancing on the State's liabilities, rights or obligations under the Project Documents;
- (c) in the case of a Refinancing (other than an Assumed Refinancing):
  - (i) the reasons why the PPP Cos wish to implement the Refinancing;

- (ii) its good faith and detailed view of the impact or potential impact of the proposed Refinancing on:
    - A. provision of the AL Project by the PPP Cos;
    - B. performance under the State Project Documents;
    - C. the financial structure or business of the Group;
    - D. the State's interest under or in respect of the State Project Documents; and
    - E. the Equity Return and Distributions;
  - (iii) a proposed mechanism for determining any Refinancing Gain and paying the State's share of the Refinancing Gain to the State;
  - (iv) all other material information in respect of the Refinancing which it believes in good faith is relevant to the State's decision to give or withhold its consent to the Refinancing; and
  - (v) copies of any documents and models relevant to the PPP Cos' request; and
- (d) in the case of an Assumed Refinancing, detailed information to enable the State to verify that the relevant Refinancing Assumptions will not be contravened.

#### **36.4 The State consent to refinancing**

The State must advise the PPP Cos within 20 Business Days of receiving the PPP Cos' notice under clause 36.3 that:

- (a) it consents to the proposed Refinancing;
- (b) the proposed Refinancing is unacceptable to it and the reasons why this is the case; or
- (c) it requires further information from the PPP Cos regarding the proposed Refinancing. If so, the PPP Cos must provide the additional information reasonably sought by the State within a further period of 5 Business Days, after which the State must respond in terms of clauses 36.4(a) and 36.4(b) within 5 Business Days of receiving the further information.

#### **36.5 Consent not to be unreasonably withheld**

The State must not unreasonably withhold or delay its consent to a proposed Refinancing (other than an Assumed Refinancing) if the State is reasonably satisfied that:

- (a) the requirements of clause 36.7 are, or will be, satisfied;
- (b) the incoming financier has the Required Rating;
- (c) the Refinancing is on commercial terms and is effected on an arm's length basis;
- (d) the PPP Cos have complied with clauses 36.2, 36.3 and 36.4(c);
- (e) the Refinancing would not result in the credit rating (if any) of a PPP Co being downgraded below investment grading;

- (f) the Refinancing would not result in any of the State's rights, obligations or liabilities under the Project Documents being worse than they would have been if the financing for the AL Project remained unchanged; and
- (g) the calculation of any Refinancing Gain and the basis on which the State is to be paid its share of the Refinancing Gain has been agreed or otherwise determined in accordance with clause 36.10.

### **36.6 The State must consent to Assumed Refinancing**

The State must provide its consent in accordance with clause 36.4 to any Assumed Refinancing if the State is reasonably satisfied that:

- (a) the requirements of clauses 36.5(a), 36.5(b) (to the extent that the Refinancing involves bank debt and not bonds), and 36.5(d) are satisfied; and
- (b) the terms and conditions of the financing documentation relating to the Refinancing other than:
  - (i) the terms and conditions of the financing documentation which are the same as the terms and conditions of the Debt Financing Documents in their form immediately before the Assumed Refinancing is effected; and
  - (ii) terms and conditions to the extent they provide for the relevant Refinancing Assumptions,

would not result in the State's rights, obligations or liabilities under the State Project Documents being materially worse compared with the respective rights, obligations or liabilities of the State under the State Project Documents immediately before the Assumed Refinancing is effected.

The State will not be entitled to share in any Refinancing Gain generated by an Assumed Refinancing.

### **36.7 Incoming financier's obligation**

For any change in the identity of the Debt Financiers:

- (a) the incoming financiers (or their agent or trustee) must execute a deed substantially in the form of the Debt Finance Side Deed; and
- (b) the incoming financiers must receive no greater security than is held by the Debt Financiers.

### **36.8 Cost of the State review**

The PPP Cos must pay the State's reasonable costs (including any reasonable legal or financial advisers' fees incurred by the State) in reviewing and, if approved, implementing any Refinancing proposal.

### **36.9 Execution of agreements and provision of revised model**

In the event of a Refinancing that is permitted or consented to by the State under this clause 36:

- (a) the State must promptly, at the request of the PPP Cos, execute a deed substantially in the form of the Debt Finance Side Deed, and otherwise on terms reasonably

acceptable to the State with the incoming financiers (or their agents or trustees), FinCo and each PPP Co; and

- (b) the PPP Cos must provide the State with:
  - (i) certified copies of all executed documentation in relating to the Refinancing; and
  - (ii) a printed copy and an electronic copy of the revised Base Case Financial Model,

within 10 Business Days of the Refinancing being implemented.

## **36.10 Refinancing Gain**

The State and the PPP Cos will use their respective reasonable endeavours to agree the Refinancing Gain and the manner and timing of paying of the State's share of the Refinancing Gain to the State. For these purposes, the PPP Cos must provide the State with all information concerning the Refinancing, the Distributions and the AL Project that the State may require to calculate the Refinancing Gain.

If the parties fail to agree the Refinancing Gain or the manner or timing of payment of the State's share of the Refinancing Gain to the State, either party may require that the matter be determined in accordance with clause 44.

For these purposes the parties must require any expert or arbitrator to make his or her determination on the basis that the State is to receive 50% of any Refinancing Gain and that the State is to be paid its share of the Refinancing Gain no later than any Equity Investor receives its share of the Refinancing Gain. The parties must also require the expert or arbitrator to determine any necessary changes to the Base Case Financial Model and Financial Model to reflect the Refinancing.

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## **37. Financial Model**

### **37.1 Changes to Financial Model**

The PPP Cos must:

- (a) update the Financial Model as reasonably necessary and at least every 12 months to reflect the changing traffic network, actual results and outcomes and other circumstances; and
- (b) obtain the prior approval of the State (which approval must not be unreasonably withheld or delayed) to any change in the Financial Model (other than in relation to historic measurable data incorporated under clause 37.2 or in accordance with clause 37.3).

### **37.2 Financial Model to incorporate data**

The PPP Cos must ensure that the Assumptions Book for the Financial Model (and consequently the Financial Model itself) incorporates relevant and accurate data (including actual data when available) when operated, or to be provided to the State from time to time, for the purposes of, or in connection with, this deed.

### **37.3 Checking and revising models**

The PPP Cos must ensure that:

- (a) such persons as may from time to time be nominated by the State are given such access to the Financial Model as that person considers necessary in order to enable the person to check whether the obligations concerning the Financial Model under this deed have been observed (including technical assistance and information as to structure and operation or so as to allow the person to establish an operating version of the model on that person's computer system), provided that the State will only nominate such a person if it reasonably considers the person to be skilled in the operation or audit (or the operation and audit) of computer models and has informed the person of the confidentiality of the contents of the Financial Model; and
- (b) revisions to the Financial Model specified by such a person by notice to a PPP Co are promptly effected unless that PPP Co by notice to the State promptly disputes the reasonableness, accuracy or relevance of any such revisions. In that event, a PPP Co may promptly refer the dispute for resolution in accordance with clause 44.

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## **38. Records and reporting obligations**

### **38.1 Accounting Records**

- (a) **(Keep books of account):** Each PPP Co must keep proper books of account and all other records it has relating to the Projects at its offices, and must ensure that each other Group Member does likewise.
- (b) **(Audit accounts):** Each PPP Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that that PPP Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that each other Group Member does likewise.
- (c) **(Books of account to be available for inspection):** Each PPP Co must ensure that its books of account and records referred to in clause 38.1(a) are available to the State and its Associates at any time during Business Hours (subject to receiving 2 Business Days notice from the State) during the Concession Period for examination, audit, inspection, transcription and copying, and must ensure that each other Group Member does likewise.
- (d) **(Access following termination):** Without limiting its obligations under clause 43, if this deed is terminated, the PPP Cos must give to the State and its Associates access to all of their respective books of account and records referred to in clause 38.1(a) which are necessary for the continued operation, repair and maintenance of the Tollroad, and must ensure that each other Group Member does likewise.
- (e) **(State to give access):** The State must give a PPP Co access to any books of account or records given to it by a Group Member for a period of 7 years after the date they are given.

### **38.2 Cost to complete information**

Each PPP Co must give to the State the same information required to be given to any Debt Financier under the Debt Financing Documents in relation to the costs to complete construction of the Project Works, at such times as are required under the Debt Financing Documents, and must ensure that each other Group Member does likewise.

### 38.3 Financial statements

- (a) **(Consolidated audited financial statements):** Not later than 30 September in each year, each PPP Co must give to the State certified copies of its unconsolidated audited financial statements for the previous Financial Year and the audited financial statements for the previous Financial Year of any consolidated entity (within the meaning of the Corporations Act) of which a PPP Co forms part, and must ensure that each other Group Member does likewise.
- (b) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, each PPP Co must give to the State certified copies of cashflow and profit & loss statements, and must ensure that each other Group Member does likewise.

### 38.4 Model information

- (a) **(Annual printouts):** Not later than 30 September in each year, the PPP Cos must give to the State certified copies of:
  - (i) a printout of the Financial Model (and an electronic copy on which the Financial Model is encoded) updated in accordance with clause 37.2 showing the actual performance of the Group in the previous Financial Year and cumulatively since the date of Financial Close, and the then current performance projections for the remaining years of the Concession Period (assuming no, or no further, extension);
  - (ii) a statement in such detail as the State may reasonably require reconciling the information in the printout and the electronic copy with the audited financial statements of the PPP Cos for the same period and the Base Case Financial Model; and
  - (iii) a statement in such detail as the State may reasonably require reconciling the information in the printout and the electronic copy of the Financial Model provided under clause 38.4(a)(i) with any financial information or Financial Model information provided for, or utilised for the purposes of, the Debt Financing Documents.
- (b) **(Form of information):** Without limiting clause 38.4(a), the PPP Cos must ensure that the State is provided with such results from the operation of the Financial Model, in a form and substance reasonably satisfactory to the State, as and when reasonably requested by the State.
- (c) **(No duty to review):** The PPP Cos acknowledge that:
  - (i) the State owes no duty to a PPP Co to review the Financial Model; and
  - (ii) no review of Financial Model will in any way:
    - A. indicate the State's acceptance of Financial Model for the purposes of this deed; or
    - B. otherwise affect either party's rights and obligations under this deed.

### 38.5 Other information

Each PPP Co must give to the State the following information:

- (a) **(ASIC and ASX information):** copies of all documents or information given or received by any Group Member or an Equity Investor to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;
- (b) **(Notices to and from Equity Investors):** copies of all notices from any Group Member to any Equity Investor relating to any Distributions;
- (c) **(Early Termination Amount):** if the State is, or is likely to become, liable to pay the Early Termination Amount, reasonable details of each component of that amount and the way the component was calculated, promptly after being requested to do so by the State;
- (d) **(Counterparty Details):** details of any changes to the Counterparty Details within 20 Business Days after the change; and
- (e) **(Other):** such other information relating to the Projects as the State may reasonably require from time to time.

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## 39. Intellectual Property Rights

### 39.1 Warranties

- (a) Subject to clause 39.1(b), each PPP Co warrants that:
  - (i) no Intellectual Property Rights or moral rights or other protected rights of any person will be infringed or breached in performing the Project Activities;
  - (ii) the design, construction, delivery, supply, use or enjoyment of the Deliverables in accordance with, or as contemplated by, this deed will not infringe any Intellectual Property Rights or moral rights or other protected rights of any person;
  - (iii) it is not aware of any claims that the Deliverables or their use or enjoyment in accordance with, or as contemplated by, this deed infringe or will infringe any Intellectual Property Rights or moral rights or other protected rights of any person;
  - (iv) it owns, or has the authority to grant the rights granted under this clause 39 in respect of, the Project Intellectual Property Rights and neither the use nor the exercise of those rights by the State, its Associates or any person nominated or authorised by the State in accordance with, or as contemplated by, this deed will infringe any Intellectual Property Rights or moral rights of any person or give rise to any liability on the part of the State, its Associates or any person nominated or authorised by the State (including to pay any compensation (including any royalty) to any third party), other than payment required under clause 39.4); and
  - (v) it has or will at the relevant time obtain the authority to grant the rights granted under this clause 39 in respect of all Intellectual Property Rights which are owned by third parties.
- (b) Each PPP Co will have no liability or obligation under clause 39.1(a) to the extent the infringement of Intellectual Property Rights or moral rights arises from:

- (i) a modification made to a Deliverable or Project Intellectual Property Rights by anyone other than a PPP Co or an Associate of a PPP Co; or
- (ii) the use of a Deliverable or Project Intellectual Property Rights as part of or in combination with any material not provided by a PPP Co or an Associate of a PPP Co,

which is:

- (iii) done without a PPP Co's written approval as to the nature of the modification or combination; and
- (iv) not contemplated in the Project Documents.

### **39.2 Grant of licence for Project purposes**

Each PPP Co:

- (a) hereby grants to the State and its Associates;
- (b) without limiting the PPP Cos' obligations under clause 39.8, must procure that each person legally entitled to do so grants to the State and its Associates (with effect from the date of creation of the relevant Project Intellectual Property Rights); and
- (c) must do all things necessary to give effect to the grant to the State and its Associates of,

an irrevocable, non-exclusive, perpetual, transferable, royalty-free licence (including the right of sub-licence) to use and exercise all or any of the Project Intellectual Property Rights in or used in:

- (d) each of the Deliverables (excluding the Tollroad Systems); and
- (e) each method of working used by the PPP Cos in performing the AL Project Activities (excluding those relating to the Tollroad Systems),

for:

- (f) the purposes of the AL Project (including achieving Tollroad Completion and Close-Out, operating the Tollroad, and maintaining and repairing the Tollroad and the Maintained Non-Tollroad Works):
  - (i) in the exercise of the State's rights under the State Project Documents (including its step-in-rights under clause 42); and
  - (ii) on and from the date the Concession Period ends; and
- (g) the purposes of the design, construction, operation, maintenance, repair and alteration of infrastructure and other things (including any Proximate Work) which interface with the AL Works, the Tollroad or the Maintained Non-Tollroad Works, during and after the Concession Period, but only to the extent the use or exercise of the Project Intellectual Property Rights is required to enable the proper design, construction, operation, maintenance, repair and alteration of that interface.

### **39.3 Grant of licence for other purposes**

Subject to clause 39.4, each PPP Co grants to:

- (a) the State; and
  - (b) such other persons as may be nominated by the State from time to time,
- (collectively, the "**Licensees**"),

a world-wide, irrevocable, non-exclusive, perpetual licence to use and exercise all or any of the Project Intellectual Property Rights in or used in:

- (c) each of the Deliverables (excluding the Tollroad Systems); and
- (d) each method of working used by the PPP Cos in performing the AL Project Activities (excluding those relating to the Tollroad Systems),

as each Licensee sees fit, for one or more uses (other than for the purposes described in clauses 39.2(f) and 39.2(g)) as may be nominated by the State in writing to the PPP Cos from time to time.

#### **39.4 Licence fees**

- (a) If the State nominates an intended use for particular Project Intellectual Property Rights under the licence granted under clause 39.3, then the State must pay to the relevant PPP Co licence fees in accordance with clause 39.4(b).
- (b) The licence fees payable under clause 39.4(a) will be:
  - (i) equal to the Reasonable Fee;
  - (ii) calculated on and from the day on which the State commences using or exercising the relevant Project Intellectual Property Rights (or any part of them) in accordance with the intended use (the "**Licence Commencement Date**"); and
  - (iii) payable in advance in respect of each period of use by the State, with the first instalment of the Reasonable Fee to be paid to the relevant PPP Co no later than 60 Business Days after the Licence Commencement Date or such other period as may be agreed.
- (c) If the parties are unable to agree on the amount of the Reasonable Fee by the date that is 30 Business Days after the Licence Commencement Date, then the amount of the Reasonable Fee will be determined in accordance with the dispute resolution procedures set out in clause 44.
- (d) Notwithstanding any other provision of this deed, if at any time the Licensees cease to use or exercise certain Project Intellectual Property Rights for a nominated purpose (and the State has notified the PPP Cos of this occurrence), then, on and from the date the relevant PPP Co receives that notice, no further licence fees referable to that purpose will be payable by the State to that PPP Co under or in connection with that licence for so long as such use ceases.

#### **39.5 Licences not affected**

Notwithstanding any other provision of this deed, the existence, validity or scope of the licences granted under clauses 39.2 and 39.3 are not in any way affected by or conditional on:

- (a) the State's failure to pay any amounts required to be paid under or in connection with this deed; or

- (b) any dispute between the parties in connection with, or any delay in the parties agreeing or an expert or arbitrator determining, the amount of any licence fees payable under this deed,

but this clause 39.5 shall not affect the obligation of the State to pay to the PPP Cos any amounts payable under or in connection with this deed.

### **39.6 Deliverables (other than the Tollroad Systems)**

Without limiting each PPP Co's other obligations under this deed with respect to the delivery of any Deliverables, (excluding the Tollroad Systems), each PPP Co will provide, and procure that its employees, officers and agents provide, all documentation, information and assistance as the State may reasonably require in connection with the State's:

- (a) use and enjoyment of the Deliverables (excluding the Tollroad Systems); and
- (b) use and exercise of the Intellectual Property Rights in such Deliverables (excluding the Tollroad Systems),

in accordance with and as contemplated by this deed.

### **39.7 Indemnities**

- (a) Each PPP Co must defend, and indemnify the State, its Associates, any person nominated or authorised by the State and any other party sub-licensed by the State in accordance with clauses 39.2 and 39.3 ("**Indemnified Persons**") from and against, all IPR Claims.
- (b) Each PPP Co must indemnify the Indemnified Persons against any Loss or Claim brought against, suffered or incurred by the Indemnified Persons arising out of or in connection with any infringement, violation, alleged infringement or alleged violation by a PPP Co or its Associates of any Intellectual Property Rights, moral rights or other protected rights of any person while performing the Project Activities.
- (c) Each PPP Co must indemnify the Indemnified Persons against any Loss or Claim arising from any breach of the warranties set out in clause 39.1.
- (d) Each PPP Co will reimburse any Loss incurred by the Indemnified Persons in connection with any IPR Claim brought against the Indemnified Persons in respect of use or enjoyment by the Indemnified Persons of any Deliverable as delivered by that PPP Co to the State or as modified by that PPP Co (but not by the State or third parties engaged by the State except as directed or approved in writing by that PPP Co) in accordance with or as contemplated by this deed, provided that:
  - (i) the relevant PPP Co may conduct any defence and/or settlement in any such IPR Claim;
  - (ii) the Indemnified Persons will (at that PPP Co's expense) fully cooperate with such defence; and
  - (iii) the relevant PPP Co receives written notice from the State of the IPR Claim (to the extent that the IPR Claim comes to the attention of the State before it comes to the attention of that PPP Co).
- (e) If an IPR Claim substantially interferes with the Indemnified Persons use or enjoyment of a Deliverable or if a PPP Co reasonably believes in consultation with

the State that such an IPR Claim may substantially interfere with such use, that PPP Co will use its best endeavours to:

- (i) replace the Deliverable, without additional charge with a non-infringing product or service of at least equivalent functionality and performance;
  - (ii) modify the Deliverable to overcome the infringement without additional charge and without materially impeding functionality or performance; or
  - (iii) obtain a licence for the Indemnified Persons to continue use and enjoyment of the Deliverable and pay any additional fee required for such licence.
- (f) Neither the State's rights nor a PPP Co's liabilities or obligations, whether under this deed or otherwise according to Law, in respect of Intellectual Property Rights or IPR Claims, will be limited by the terms of this clause 39.7.
- (g) Clauses 39.7(a) to (e) do not apply to, and each PPP Co will have no liability or obligation for, an IPR Claim to the extent the IPR Claim arises from:
- (i) a modification made to a Deliverable by anyone other than a PPP Co or an Associate of a PPP Co; or
  - (ii) the use of a Deliverable as part of or in combination with any material not provided by a PPP Co or an Associate of a PPP Co,

which is:

- (iii) done without a PPP Co's written approval as to the nature of the modification or combination; and
- (iv) not contemplated in the Project Documents.

### **39.8 Moral rights**

If a PPP Co, in the course of performing the Project Activities (excluding activities relating to the Tollroad Systems), including in relation to the design, manufacture, delivery, supply, use or enjoyment of any Deliverable (excluding the Tollroad Systems), includes or makes use of any work or other subject matter in which copyright subsists, that PPP Co must procure from every person (including any officer, employee, agent, consultant or subcontractor of that PPP Co or any of its Associates) who is an author of that work or subject matter a written consent signed by that person for the benefit of the State, its Associates and any person nominated or authorised by the State (including sub licensees) as well as that PPP Co and its Associates (the "**Beneficiaries**"), and any person authorised to do acts comprised in the copyright, under which (to the maximum extent permitted by law) that person irrevocably and unconditionally:

- (a) consents to the Beneficiaries and any person authorised to do acts comprised in the copyright:
  - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation in a manner which but for the consent, infringes or may infringe that person's moral rights in the work or other subject matter) as

so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and

- (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world without making any identification of that person in relation thereto; and
- (b) waives, to the extent permitted by law, all and any moral rights to which that person may be entitled anywhere in the world in relation to any Deliverable (other than the Tollroad Systems).

In procuring such consents and waivers, the relevant PPP Co will not (and must not encourage or permit anyone else to) apply any duress to any person or make a statement to any person knowing that the statement is false or misleading in a material particular, or knowing that a matter or thing has been omitted from the statement without which the statement is false or misleading in a material particular.

### **39.9 Third party materials**

- (a) Clauses 39.2, 39.3 and 39.8 will not extend to any Intellectual Property Rights that are Third Party Intellectual Property Rights if, and only to the extent that:
  - (i) the material the subject of the relevant Intellectual Property Rights (the "**Third Party Material**") is generally commercially available on reasonable commercial terms;
  - (ii) the PPP Cos have been unable (despite using their reasonable endeavours) to procure from the relevant third party the right to grant the licences in clauses 39.2 and 39.3 and the consents required in clause 39.8 in respect of that Third Party Material;
  - (iii) the PPP Cos have notified the State that they have been unable to procure the necessary licence or consent rights for that Third Party Material; and
  - (iv) the State has given its approval to the Third Party Material being excluded from the subject matter of the licenses granted in clauses 39.2 and 39.3 and the consents required in clause 39.8. This approval may be given at the State's sole discretion, and is subject to such conditions as the State sees fit, and will be deemed given if:
    - A. the State has given its prior approval in writing to that PPP Co to the Third Party Material forming part of a Deliverable; and
    - B. prior to each such approval being given, the relevant PPP Co has informed the State in writing that the relevant approval would also constitute a deemed approval under this clause 39.9(a)(iv), and that this would have certain Intellectual Property Rights implications in relation to the State's ability to use the material the subject of the approval.

The State not giving its approval under this clause will not excuse a PPP Co from any of its obligations under this deed or any of the Project Documents.

- (b) If the State has reasonable grounds to withdraw, and notifies a PPP Co that it has withdrawn, its approval under clause 39.9(a) in respect of any Third Party Material, that PPP Co must immediately procure for the State from the relevant third party (or parties), at that PPP Co's sole cost and expense, all licences necessary under the terms of this deed in respect of that Third Party Material.
- (c) Clause 39.3 will not extend to any Intellectual Property Rights if, and only to the extent that the material the subject of the relevant Intellectual Property Rights is specified in Schedule 20.

### **39.10 Survival of rights**

The rights granted pursuant to clauses 39.2, 39.3 and 39.8 will survive:

- (a) rescission, termination or expiration of this deed; and
- (b) works being taken out of the hands of a PPP Co pursuant to the exercise of the State's step-in-rights under clause 42.

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## **40. Disclosure and publicity**

### **40.1 Disclosure by the State**

The State may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of this deed and any other Project Document; and
- (b) any document or information arising under, out of or in connection with this deed or any other Project Document or relating to the performance of this deed or any other Project Document,

including information which is specified in Schedule 9. Prior to publishing or disclosing any of the information specified in Schedule 9, the State will, where circumstances reasonably permit, give the PPP Cos 5 Business Days notice of its proposal to publish or disclose all or part of that information. If the PPP Cos' preference is that the State not publish or disclose all or part of that information, then the PPP Cos may provide the State with written reasons within that 5 Business Day period. While the State may consider any written reasons provided by the PPP Cos within this period, the PPP Cos acknowledge that the State may still publish or disclose such information in such manner as the State sees fit.

### **40.2 Public disclosure**

- (a) **(Public Disclosure Obligations):** Each PPP Co acknowledges and agrees that disclosure by the State, the Council or any Authority may be required:
  - (i) by law, including under the Transport Infrastructure Act and the *Right to Information Act 2009* (Qld); or
  - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,**("Public Disclosure Obligations").**
- (b) **(Endeavours to assist):** Each PPP Co must, at its own cost and expense, use all reasonable endeavours to assist the State, the Council or an Authority in meeting its Public Disclosure Obligations.

### **40.3 Disclosure by PPP Cos**

- (a) Subject to clauses 40.3(b) and 40.4, each PPP Co:
  - (i) must not, and must ensure that its Associates do not, make any public disclosures, announcements or statements in relation to the Projects or the State's or the State's Associates' involvement in the Projects without the State's prior consent and if such disclosure, announcement or statement is required as a matter of Law, such consent will not be unreasonably withheld;
  - (ii) must use their reasonable endeavours to agree with the State the wording and timing of all public disclosures, announcements and statements by it or its Associates relating to the Projects or the State's or the State's Associates' involvement in the Projects before the relevant disclosure, announcement or statement is made;
  - (iii) must give the State a draft of any proposed disclosure, announcement or statement (including media releases) relating to the Projects or the State's or the State's Associates' involvement in the Projects and must obtain the State's approval of the disclosure, announcement or statement (including media releases) before distributing such disclosure, announcement or statement; and
  - (iv) as soon as practicable, must give to the State a copy of any disclosure, announcement or statement (including media release) agreed to or approved by the State under this clause 40.3(a) or for which the State's consent or approval was not required under clause 40.3(b)(ii)A.
- (b) The parties acknowledge and agree that for the purposes of clause 40.3(a):
  - (i) Associates does not include Equity Investors; and
  - (ii) if the Holding Entities are listed on a recognised stock exchange, the Holding Entities will not be required to obtain the State's consent or approval to the extent that any disclosure, announcement or statement is required by a relevant stock exchange or as a matter of Law; and
    - A. does not refer to the State's or the State's Associates' involvement in the Projects; or
    - B. refers to the State's or the State's Associates' involvement in the Projects.

### **40.4 Disclosure following Tolling System Completion**

Following the Date of Tolling System Completion, clause 40.3 will only apply to public disclosures, announcements or statements in relation to the Projects or the State which:

- (a) contain any express or implied reference to the State or its Associates;
- (b) relate directly or indirectly to Customer Services or the manner in which Customer Services will be delivered or available to users or potential users of the Tollroad; or
- (c) have the potential to have an adverse public relations impact with regard to the Projects or the State's, or the State's Associates', involvement in the Projects.

A reference to Customer Services in this clause 40.4 does not include the marketing information and other Customer Services information referred to in clause 20.10(e).

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## 41. Default and Termination

### 41.1 Events of Default in respect of a PPP Co

Each of the following events is an Event of Default in respect of a PPP Co:

- (a) **(Failure to commence or progress D&C Activities):** a PPP Co fails to commence (or ensure that the State Works Contractor and the NB Works Contractor commence), or to expeditiously and diligently progress (or ensure that the State Works Contractor and the NB Works Contractor expeditiously and diligently progress) in accordance with clause 15.2, the D&C Activities;
- (b) **(Abandonment):** a PPP Co or the NB Works Contractor displays an intention to permanently abandon, or permanently abandons one or more of the Projects;
- (c) **(Closure of traffic lanes):** after the Tollroad Opening Date, TQ Operations closes or permits the closure of one or more traffic lanes, in whole or in part, of the Tollroad other than for reasons permitted under clause 19.3;
- (d) **(Failure to operate, maintain, repair or insure):** TQ Operations fails in a material respect to operate, maintain, repair or insure the Tollroad or maintain and repair the Maintained Non-Tollroad Works in accordance with its obligations under this deed;
- (e) **(Failure to comply re: environmental and community consultation):** a PPP Co defaults in a material respect in the due observance and performance of its obligations under this deed with respect to the Environmental Documents, the Design and Construction Environmental Management Plan, Annexure 6 of the Performance Specification, the Community and Consultation Management Plan, the EWAG State Planning Approval or the Construction Traffic Management Plan;
- (f) **(Material default):** a PPP Co, the State Works Contractor or the NB Works Contractor defaults in a material respect in the due observance and performance of any of its other obligations under this deed, the EWAG Works Deed, the NB Works Deed or any other Project Document (unless, in the case of a Project Document which is not a State Project Document, a PPP Co disclosed the default as soon as practicable after it first becomes aware of it and, it is remedied or waived to the satisfaction of the relevant counterparty(s) to that Project Document within the time permitted by that counterparty);
- (g) **(Breach of representation or warranty):** a representation or warranty given by a PPP Co, the State Works Contractor or the NB Works Contractor under a State Project Document is found to be materially incorrect or misleading (unless a PPP Co, the State Works Contractor or the NB Works Contractor disclosed the misrepresentation or breach of warranty as soon as practicable after it first became aware of the misrepresentation or breach of warranty and, if the State gives it notice to rectify the misrepresentation or breach of warranty, the relevant PPP Co, the State Works Contractor or the NB Works Contractor remedies the misrepresentation or breach of warranty in a manner acceptable to the State (acting reasonably) in accordance with that notice);
- (h) **(Insolvency of a PPP Co, the State Works Contractor or the NB Works Contractor):** an Event of Insolvency occurs in relation to a PPP Co, the State

Works Contractor or the NB Works Contractor, whether or not that PPP Co, the State Works Contractor or the NB Works Contractor has been in breach of a State Project Document;

- (i) **(Insolvency of Contractor or Guarantor):** an Event of Insolvency occurs in relation to the D&C Contractor, the D&C Guarantor, the O&M Contractor or the O&M Guarantor, whether or not a PPP Co is then in breach of a State Project Document, and that D&C Contractor, D&C Guarantor, O&M Contractor or O&M Guarantor is not replaced within 60 days by a party which is:
  - (i) reputable, solvent and has the resources and experience to perform its obligations under the D&C Contract or the O&M Contract, as the case may be (or in the case of the D&C Guarantor or the O&M Guarantor, the D&C Contractor's obligations under the D&C Contract or the O&M Contractor's obligations under the O&M Contract, as the case may be); or
  - (ii) otherwise acceptable to the State; and
- (j) **(Debt Funding cancelled):** the obligation of a Debt Financier to provide funding under the Debt Financing Documents is cancelled.

## 41.2 Notice of default

- (a) **(Notice of Default):** If an Event of Default occurs in respect of either PPP Co then the State may give the PPP Cos a notice:
  - (i) stating that it is a notice under this clause 41.2; and
  - (ii) requiring the relevant PPP Co to remedy the Event of Default (or overcome its effects) within:
    - A. in the case of an Event of Default referred to in clause 41.1(c), 2 days;
    - B. in the case of an Event of Default referred to in clause 41.1(e), 2 days; and
    - C. in all other cases, such period specified in the notice (not less than 2 days and not exceeding 40 Business Days) as is in the reasonable opinion of the State required to remedy the Event of Default (or to overcome its effects).
- (b) **(PPP Cos to comply with notice and provide remedy program):** If the State gives such a notice to the PPP Cos, then:
  - (i) the relevant PPP Co must comply with the notice; and
  - (ii) unless the relevant Event of Default is a failure to pay money or to provide, replace or top-up any Bond, in which case no program will be required:
    - A. the relevant PPP Co must give the State a program to remedy the Event of Default (or overcome its effects) in accordance with the terms of the State's notice;

- B. the parties must consult in good faith to develop and settle the remedy program; and
- C. following agreement or determination of the remedy program, the relevant PPP Co must implement and comply with the remedy program.

(c) **(Requests for extensions to remedy period):**

- (i) If the PPP Cos consider, in good faith, that the time specified in a default notice is not reasonable, it must immediately notify the State of that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Event of Default (or overcome its effects).
- (ii) The PPP Cos may give a notice under clause 41.2(c)(i), even if the PPP Cos have previously given one or more such notices.

(d) **(When extensions to be given):** If a PPP Co gives a notice under clause 41.2(c)(i) and:

- (i) the PPP Cos are and have been diligently pursuing the program to remedy the Event of Default (or to overcome its effects); and
- (ii) if after the Tollroad Opening Date, all traffic lanes of the Tollroad are open to the public to the extent that it is safe to do so (except to the extent that a closure is permitted under clause 19.3),

then, subject to clause 41.2(e), the time specified in the notice given by the State under clause 41.2(a) will be extended by such period as the State determines is reasonably required to enable the PPP Cos to remedy the Event of Default (or to overcome its effects), as notified by the State to the PPP Cos.

(e) **(Maximum remedy period):** The maximum period of time which the PPP Cos may be given to remedy an Event of Default will be 6 months in the aggregate from the date of the State's notice under clause 41.2(a).

(f) **(Disputes):** If the PPP Cos consider in good faith that the time specified in the notice given by the State under clause 41.2(d) is not reasonable or there is a failure to agree a remedy program as required by clause 41.2(b)(ii) it:

- (i) may (providing that it is and has been diligently pursuing the remediation of the Event of Default (or the overcoming of its effects)) refer the matter for resolution in accordance with clause 44; and
- (ii) whilst the matter is being determined, must continue to diligently pursue the remediation of the Event of Default (or the overcoming of its effects).

The parties acknowledge and agree that the expert or arbitrator (if applicable) is not entitled to determine that the remedy period for an Event of Default will exceed 6 months in the aggregate from the date of the State's notice under clause 41.2(a).

### 41.3 Termination by the State

- (a) **(Notice of intention to terminate):** If:
- (i) an Event of Default is not remedied (or its effects overcome) within the time specified in the State's notice under clause 41.2(a) (as extended, if at all, in accordance with clause 41.2(d) or 41.2(f));
  - (ii) at any time after the State has given notice under clause 41.2(a), a PPP Co is not diligently pursuing or has not diligently pursued the remediation of the Event of Default (or the overcoming of its effects), including implementing any remedy program agreed under clause 41.2(b)(ii) or agreed or determined under clause 44; or
  - (iii) after the Tollroad Opening Date, all traffic lanes of the Tollroad are not open to the general public to the extent that it is safe to do so (except to the extent that a closure is permitted under clause 19.3),

the State may give the PPP Cos 20 Business Days notice of its intention to terminate this deed. During this 20 Business Day period the PPP Cos will have the right to remedy the Event of Default (or overcome its effects).

- (b) **(Notice of termination):** If at the end of the 20 Business Day period following notice under clause 41.3(a):
- (i) the Event of Default has not been remedied (or its effects overcome); or
  - (ii) if after the Tollroad Opening Date, all traffic lanes of the Tollroad are not open to the general public to the extent that it is safe to do so (except to the extent that a closure is permitted under clause 19.3),

the State may (subject to the Debt Finance Side Deed) thereafter terminate this deed by notice to the PPP Cos.

- (c) **(No compensation):** Upon any termination of this deed under this clause 41.3, the State will not be liable to pay any compensation or other amounts whatsoever to either PPP Co by reason of that termination.

- (d) **(Restrictions on the State's right to terminate):** If:
- (i) the State would, but for this clause 41.3(d), be entitled to terminate this deed because of an Event of Default in respect of a PPP Co; and
  - (ii) the Event of Default arose as a sole and direct cause of a breach by the State of a State Project Document,

then, in the context of that Event of Default, the State will not be entitled to exercise that entitlement to terminate.

### 41.4 Events of Default in respect of the State

Each of the following events is an Event of Default in respect of the State:

- (a) a court makes a Final Court Decision which makes it impossible for the PPP Cos to undertake all, or substantially all, of the AL Project, for a continuous period of 2 months (except where the Final Court Decision is issued as a result of a breach by a

PPP Co or its Associate of the Project Documents or some other wrongful act or omission by a PPP Co or its Associates);

- (b) the State enacts legislation which makes it impossible for the PPP Cos to undertake all, or substantially all, of the AL Project for a continuous period of 2 months (except where the legislation is enacted as a result of a breach by a PPP Co or its Associates of the Project Documents or some other wrongful act or omission by a PPP Co or its Associates);
- (c) an Authority of the State resumes any part of the Leased Area which makes it impossible for the PPP Cos to undertake all or substantially all of the AL Project for a continuous period of 2 months;
- (d) the State fails to provide a PPP Co with a licence to the Licensed Construction Areas in accordance with clause 4.1 (Access by PPP Co) of the Agreement to Lease and this breach makes it impossible for the PPP Cos to undertake all, or substantially all, of the AL Project for a continuous period of 2 months;
- (e) the State defaults in its payment obligations under clause 4 (Payment) of the State Works Deed; or
- (f) at any time when Tolling System Completion has otherwise occurred the Tollroad is not declared to be a "toll road" under the Transport Infrastructure Act or (at any time during the O&M Phase) such a declaration is in force, but it is subject to a condition that makes it impossible for the PPP Cos to undertake all or substantially all of the AL Project, unless that non-declaration, or that condition, is a result of a breach by a PPP Co or its Associates of the State Project Documents or some other wrongful act or omission by a PPP Co or its Associates.

#### **41.5 Termination by the PPP Cos**

- (a) **(Notice of intention to terminate):** If an Event of Default occurs in respect of the State then the PPP Cos may give the State 30 Business Days notice of its intention to terminate this deed.
- (b) **(Suspension of right to terminate):** If the PPP Cos give a notice under clause 41.5(a), the State may suspend the PPP Cos' right to terminate by giving the PPP Cos a suspension notice within 30 Business Days of receipt of PPP Cos' notice.
- (c) **(Expiry of suspension period):** The State's suspension of PPP Cos' right to terminate expires on the earliest of:
  - (i) the State notifying the PPP Cos that it is ending the suspension period;
  - (ii) in the case of an Event of Default referred to in clause 41.4(e), 30 Business Days after the date of the State's notice under clause 41.5(b);
  - (iii) in the case of any other Event of Default in respect of the State, 24 months after the date of the PPP Cos' notice under clause 41.5(a) provided that if a principal amount of the Project Debt falls due for payment under the Debt Financing Documents more than 18 months after the suspension period started (without regard to acceleration of the obligation to repay or election to repay money early), either (subject to clause 41.5(e)), the payment of that principal shall be procured by the State when due (and the Early Termination Amount will be reduced accordingly) or at the election of the State, the suspension period shall end on the date for payment; and

- (iv) when the relevant Event of Default has been remedied (or its effects overcome).
- (d) **(Payment by the State):** If the State pays a principal amount in accordance with clause 41.5(c)(iii) and this deed is not terminated by the PPP Cos:
- (i) before the relevant Event of Default is remedied (or its effects overcome); or
  - (ii) within 6 months of the date the State paid the principal amount despite the subsistence of the relevant Event of Default and the expiry of the suspension period,
- then the PPP Cos must repay the principal amount paid by the State, less the reasonable direct costs incurred by the PPP Cos in Refinancing that amount (to the extent such costs are not payable by the State under clause 41.5(g)), and this amount will be a debt due and payable by the PPP Cos to the State,
- (iii) in the case of 41.5(d)(i), within 60 days of the relevant Event of Default being remedied (or its effects overcome); and
  - (iv) in the case of 41.5(d)(ii), on the date that is 6 months from the date the State paid the principal amount.
- (e) **(Effect of expiry):** If the State's suspension of the PPP Cos' right to terminate expires:
- (i) under clause 41.5(c)(i), clause 41.5(c)(ii) or clause 41.5(c)(iii), the PPP Cos may immediately terminate this deed by notice to the State; and
  - (ii) under clause 41.5(c)(iv), this deed will continue in force.
- (f) **(Continue to perform):** Each PPP Co must continue to perform its obligations under the State Project Documents while its right to terminate is suspended to the extent that it is lawful and practicable to do so.
- (g) **(Compensation during suspension period):** If the State suspends the PPP Cos' right to terminate, the State must pay each PPP Co, in respect of the period of suspension, which, for the purposes of this clause 41.5, will be deemed to have started from the beginning of the 2 month period referred to in clauses 41.4(a), 41.4(b), 41.4(c) or 41.4(d) (as applicable), an amount sufficient to place each PPP Co in the net after tax position it would have been in had the relevant Event of Default in respect of the State not occurred. The State must pay this amount monthly in arrears.
- (h) **(Termination):** If the State does not give a suspension notice under clause 41.5(b) and the relevant Event of Default has not been remedied (or its effects overcome) within 30 Business Days of receipt of the PPP Cos' notice under clause 41.5(a), the PPP Cos may if the relevant Event of Default is still subsisting, immediately terminate this deed by notice to the State.
- (i) **(Progress reports):** The State will keep the PPP Cos regularly informed on developments in any avenues that it is pursuing with a view to curing the Event of Default by the State. If the State is reasonably of the view that no further material progress towards such a cure is likely to be made, it will notify the PPP Cos accordingly and will end the suspension period.

- (j) **(Suspension of defaults):** During the suspension period, the State will not give notice of default under clause 41.1(h) or clause 41.1(j) (nor in respect of anything else that would be an Event of Default by the PPP Cos, to the extent that it results from the relevant Event of Default in respect of the State).

#### **41.6 No prejudice to right to damages**

Subject to clause 41.7(b)(ii), termination of this deed under this clause 41 will not in any way prejudice a party's right to claim and recover damages for any breach of contract by another party.

#### **41.7 Payments on termination**

- (a) **(The State's right to damages):** Any termination of this deed by the State under clause 41.3 will entitle the State to recover from the PPP Cos any Loss that the State may suffer or incur arising out of or in any way in connection with the termination of this deed.
- (b) **(Early Termination Amount):**
  - (i) If this deed is terminated under clause 8.7(g), clause 26.12, clause 41.5(e)(i) or clause 41.5(h) then the State must, within 30 Business Days of that termination, pay to the PPP Cos the Early Termination Amount and pay, if applicable, to the NB Works Contractor the NB Termination Amount and the EWAG Termination Amount.
  - (ii) Payment of the Early Termination Amount, the NB Termination Amount and the EWAG Termination Amount will be full and final settlement of the PPP Cos' and the NB Works Contractor's rights against the State for breach and/or termination of this deed, the NB Works Deed and the EWAG Works Deed. On termination of this deed the PPP Cos will not be entitled to make any Claim against the State for any amount other than for payment of the Early Termination Amount and, on behalf of the NB Works Contractor, the NB Termination Amount and the EWAG Termination Amount (except for any liability which arose prior to the date of termination (but not from the termination itself) that has not already been taken into account in the Early Termination Amount, the NB Termination Amount or the EWAG Termination Amount).
  - (iii) If the State is, or is likely to become, liable to pay the Early Termination Amount, the NB Termination Amount or the EWAG Termination Amount, the PPP Cos must, promptly after being requested to do so by the State, give the State reasonable details of each component of that amount and the way the component was calculated.

#### **41.8 No other termination rights**

Despite any rule of law or equity to the contrary, neither party may terminate, rescind or treat as repudiated this deed or any rights under this deed other than, as expressly provided for in this deed, the EWAG Works Deed or the NB Works Deed.

#### **41.9 Waiver**

If a termination occurs under this deed, the EWAG Works Deed or the NB Works Deed, each PPP Co waives any right it might otherwise have to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit and the PPP Cos' only entitlement in the circumstances will be in respect of its rights (if any) under clause 41.7.

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## **42. Step-in by the State**

### **42.1 Notice from the State**

If a PPP Co breaches an obligation under any State Project Document, the State may give the PPP Cos notice:

- (a) stating that it is a notice under this clause 42.1; and
- (b) requiring the relevant PPP Co to remedy the breach.

### **42.2 Right to step-in**

If a PPP Co:

- (a) has not, within a reasonable time after receipt of the State's notice under clause 42.1 taken steps to remedy the breach; or
- (b) having taken such steps, fails to remedy the breach within a reasonable time,

then the State may take such action as may be necessary to remedy the breach (including requiring the Tollroad or part of it to be closed).

### **42.3 PPP Cos to assist the State**

If the State elects to exercise its step-in right under clause 42.2, the PPP Cos must assist the State wherever and however possible to ensure that the State is able to exercise its step-in right effectively and expeditiously, including giving the State or its nominees access to the Project Areas and any other land upon which the Project Activities are being carried out.

### **42.4 Cessation of step-in rights**

If the State exercises its step-in rights under clause 42.2, the State may cease to exercise that right at any time and, in any event, will cease to exercise its step-in right once the relevant breach has been remedied.

### **42.5 The State not required to remedy breach**

Each PPP Co acknowledges and agrees that the State is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which the State exercises its step-in rights.

### **42.6 The relevant PPP Co must compensate the State**

Any Loss suffered or incurred by the State arising out of or in connection with the exercise by the State of its step-in rights under this clause 42 will be a debt due and payable from the relevant PPP Co to the State.

### **42.7 No liability**

The State will have no liability to a PPP Co, and each PPP Co will not be entitled to make any Claim against the State, arising out of or in connection with the exercise by the State of its step-in rights under this clause 42.

## 42.8 No limitation on other rights

The exercise (or non-exercise) by the State of its step-in rights will not limit any other right of the State whether under this deed or otherwise, including its rights under clause 41.

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## 43. Handover at end of Concession Period

### 43.1 Obligations approaching end of Concession Period

- (a) **(Joint inspection):** If required by the State, each PPP Co and the State must carry out joint inspections of the Tollroad and the Maintained Non-Tollroad Works at least 3 years before the expected expiry of the Concession Period and every 6 months after that initial inspection until the end of the Concession Period.
- (b) **(Program to achieve proper Handover):** Following each inspection under clause 43.1(a), the parties must use their reasonable endeavours to agree on:
  - (i) the maintenance and repair work required to be carried out by TQ Operations to achieve Handover (taking account of planned maintenance scheduled in accordance with O&M Best Practices);
  - (ii) following the first inspection, a program for carrying out those works by TQ Operations and following the other inspections updates of that program; and
  - (iii) an estimate of the total costs of carrying out those works (including an appropriate margin for risks and contingencies being not less than 10% of the estimate of those total costs without that margin or contingency added) determined in accordance with O&M Best Practices.
- (c) **(Dispute resolution process):** If the parties do not agree on all the matters referred to in clause 43.1(b) within 20 Business Days after the date of inspection, either party may refer those aspects of the matters in dispute for dispute resolution under clause 44.
- (d) **(Implement program):** Without limiting TQ Operations' operation, maintenance, repair or handover obligations under this deed, the relevant PPP Co must:
  - (i) carry out the works and implement the program agreed or determined under clause 43.1(b) or clause 43.1(c); and
  - (ii) either:
    - A. progressively deposit into an account opened by the State in the State's name with a registered bank as nominated by the State (the "**Handover Escrow Account**") all revenue it receives (after deducting operating and maintenance expenses, payments under clause 23.1, scheduled capital expenditure and taxes) with respect to the last 3 years of the Concession Period until such time as the balance of the Handover Escrow Account equals or exceeds the estimated total cost of the works (as agreed or determined pursuant to clause 43.1(b) or clause 43.1(c)); or
    - B. provide to the State a bond having a face value equal to the estimated total cost of the works (as agreed or determined pursuant to clause 43.1(b) or clause 43.1(c)) and which

complies with the requirements of clause 5.2 ("**Handover Bond**"),

as security for the performance of such works and TQ Operations' obligations under this clause 43.

- (e) **(Training of personnel):** During the expected final 3 months of the Concession Period, TQ Operations must train personnel nominated by the State in all aspects of the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works to a level of competency that will allow those personnel to manage, operate, maintain and repair the Tollroad and maintain and repair the Maintained Non-Tollroad Works to the standards required of TQ Operations under this deed from the expiry of the Concession Period.

## 43.2 Handover

At the end of the Concession Period:

- (a) **(Condition at handover):** TQ Trustee must handover the Tollroad, the Maintained Non-Tollroad Works and the Leased Area (including all rights, title and interest in them) to the State or its nominee free from any encumbrances and in a state and condition which complies with the requirements of this deed (including the Performance Specification) including:
  - (i) that there are no Defects in, or repair works required to, any part of the Tollroad or the Maintained Non-Tollroad Works;
  - (ii) that the residual design life of the asset items comprising the Tollroad and the Maintained Non-Tollroad Works is at least equal to the required residual design life specified in the Performance Specification; and
  - (iii) that no material asset item replacement is anticipated to be required for 5 years.
- (b) **(Plant and equipment):** the PPP Cos must transfer to the State or its nominee all rights, title and interest in plant and equipment required to allow the State or its nominee to operate, maintain and repair the Tollroad and the Maintained Non-Tollroad Works to the standards required of the PPP Cos under this deed (including the Performance Specification) free from any encumbrances;
- (c) **(Manuals etc.):** the PPP Cos must deliver to the State or its nominee all manuals, records, plans and other information under the control of the PPP Cos which are relevant to the design, construction, operation, maintenance or repair of the Tollroad and the Maintained Non-Tollroad Works;
- (d) **(Novation of contracts):** each PPP Co must procure the novation to the State or its nominee of:
  - (i) such contracts for services to which it or the O&M Contractor is a party as they relate to the Tollroad and the Maintained Non-Tollroad Works as the State may nominate; and
  - (ii) any leases, subleases and licences agreed to by the State;
- (e) **(Intellectual Property Rights):** without limiting clause 39, each PPP Co must grant or procure the grant to the State or its nominee of such Intellectual Property Rights as will enable the State or its nominee to be in a position to operate, maintain

and repair the Tollroad and the Maintained Non-Tollroad Works at the higher of the performance level specified in this deed (including the Performance Specification) and that applicable immediately before the end of the Concession Period;

- (f) **(Insurances):** each PPP Co must pay to the State or its nominee any insurance proceeds from any Insurances for the reinstatement or replacement of the Tollroad and the Maintained Non-Tollroad Works to the extent not already reinstated or replaced, and assign to the State any rights available to that PPP Co under the Insurances;
- (g) **(Accounts):** each PPP Co must pay to the State or its nominee the balance of the Maintenance and Repairs Account and the Insurance Proceeds Account as of that date;
- (h) **(Software, hardware etc.):** TQ Operations must provide to the State all software, hardware, equipment, materials and documentation necessary or desirable in order for the State or its nominee to fully operate and maintain the Tolling System;
- (i) **(Software licences):** each PPP Co must procure for the State an assignment or sublicense of all licences relating to any software belonging to any third party which relates to the use or operation of the Tolling System or any other aspect of the Tollroad;
- (j) **(Approvals):** each PPP Co must do all acts and things necessary to enable the State (or its nominee) to have transferred or obtain all Approvals necessary for the operation, maintenance and repair of the Tollroad and the Maintained Non-Tollroad Works; and
- (k) **(All other acts):** each PPP Co must do all other acts and things to enable the State (or its nominee) to be in a position to operate, maintain and repair the Tollroad at the higher of the performance level specified in this deed (including the Performance Specification) and that applicable immediately before the end of the Concession Period, with minimum disruption to its public use.

### 43.3 If Close-Out has not occurred

- (a) **(Each PPP Co to assist the State):** If this deed is terminated before Close-Out has been achieved, then in addition to the requirements set out above, the State may require each PPP Co to do any or all of the following:
  - (i) procure a novation to the State or its nominee of any D&C Contract, O&M Contract and any other relevant contract;
  - (ii) give and require its Associates to give to the State or its nominee possession of the plant, equipment, materials, temporary work and tools being used in the AL Works and other things on or in the vicinity of the Construction Site, in each case which are owned by a PPP Co or its Associates and are reasonably required to facilitate completion of the Tollroad;
  - (iii) deliver, and require its Associates to deliver to the State or its nominee true copies of the books of account and all other records relating to the AL Project; and
  - (iv) do all other acts and things to enable the State or its nominee to undertake the AL Project.

- (b) **(The State to return plant, equipment etc.):** If the State or its nominee takes possession of the plant, equipment, materials, temporary work and tools in accordance with clause 43.3(a)(ii), then the State must use reasonable endeavours to procure the proper use and maintenance of them and, when the equivalent of Close-Out is achieved, to procure the handover to TQ Operations of that plant, equipment, materials, temporary works and tools which have not been consumed or incorporated in the Tollroad and are not required for the operation or maintenance of the Tollroad.

#### **43.4 Assistance in securing continuity**

TQ Operations must, before the end of the Concession Period, do all things reasonably required by the State to ensure the smooth and orderly transmission of responsibility for the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works to the State or its nominee including:

- (a) meeting with the State and such other persons notified by the State to discuss the operation, maintenance and repair of the Tollroad and the maintenance and repair of the Maintained Non-Tollroad Works;
- (b) providing access to its operations for managers and supervisors of the State or its nominee for the purpose of familiarisation; and
- (c) providing sufficient information to the State or its nominee to determine the status and condition of the Tollroad and the Maintained Non-Tollroad Works and any works programs in place at the time.

#### **43.5 Non-frustration of handover**

Each PPP Co must not do or omit to do anything which avoids or materially prejudices or frustrates the handover of the Tollroad as a going concern to the State.

#### **43.6 Power of Attorney**

Each PPP Co irrevocably appoints, with effect from the end of the Concession Period, the State and such persons as are from time to time nominated by the State, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 43.2 or clause 43.4.

#### **43.7 Inspection at end of Concession Period**

- (a) **(Handover notice):** Within 45 Business Days after the end of the Concession Period, the State must give the PPP Cos a notice ("**Handover Notice**") specifying:
  - (i) details of matters or things which the State considers each PPP Co needs to do or rectify to achieve Handover;
  - (ii) the extent to which the State considers the residual design life of an asset item is less than the required residual design life specified in the Performance Specification; and
  - (iii) the amount which the State considers necessary is required to be spent by the State to do or rectify the matters specified in clause 43.7(a)(i) and to ensure that the asset items comprising the Tollroad and the Maintained Non-Tollroad Works have a residual design life at least equal to the required residual design life ("**Handover Amount**").

- (b) **(PPP Co election):** Each PPP Co must, within 20 Business Days after receiving the Handover Notice, notify the State that it:
- (i) agrees with the amount set out in the Handover Notice ("**Handover Agreement Notice**"); or
  - (ii) disagrees with the details or the amount set out in the Handover Notice, together with details of why it disagrees ("**Handover Disagreement Notice**").
- (c) **(Agreement notice):** If a PPP Co gives the State a Handover Agreement Notice, or fails to give a Handover Disagreement Notice, then:
- (i) the amount set out in the Handover Notice will be a debt due and payable by the relevant PPP Co to the State; and
  - (ii) without prejudice to any other rights the State may have, the State may draw on the Handover Escrow Account or make a demand under the Handover Bond to recover the amount set out in the Handover Notice.
- (d) **(Disagreement notice):** If a PPP Co gives the State a Handover Disagreement Notice, the parties must consult in good faith and use their reasonable endeavours to agree on the details of the Handover Notice or the Handover Amount.
- (e) **(Consequences following consultation):** If the parties, following the consultation in clause 43.7(d):
- (i) reach agreement as to the Handover Amount, then:
    - A. the agreed Handover Amount will be a debt due and payable by the relevant PPP Co to the State; and
    - B. without prejudicing any other rights the State may have, the State may draw on the Handover Escrow Account or make a demand under the Handover Bond to recover the agreed Handover Amount; or
  - (ii) are unable to reach agreement as to the Handover Amount within 10 Business Days after service of the Handover Disagreement Notice, then:
    - A. without prejudicing any other rights the State may have, the State may draw on the Handover Escrow Account or make a demand under the Handover Bond up to the amount set out in the Handover Notice; and
    - B. the matters in dispute will be referred for dispute resolution in accordance with clause 44.
- (f) **(The State to reimburse the relevant PPP Co):** The State must pay to the relevant PPP Co the difference between the amount drawn from the Handover Escrow Account or paid by the issuer of the Handover Bond following a demand under clause 43.7(e)(ii)A and any lesser amount which is determined to be the Handover Amount within 5 Business Days of the determination.
- (g) **(No obligation in respect of monies):** Each PPP Co acknowledges and agrees that the State is under no obligation to apply any monies it receives under this clause 43.7 towards the cost of satisfying the conditions precedent to Handover.

- (h) **(Money remaining in Handover Escrow Account):** If after:
- (i) the State has recovered the amounts (if any) owing under clause 43.7(c), clause 43.7(e)(i) or clause 43.7(e)(ii) (as applicable); and
  - (ii) any set-off or deduction by the State under clause 23.4,
- and there is any money remaining in the Handover Escrow Account, then such money must be paid by the State to the relevant PPP Co.
- (i) **(No limitation of rights):** Nothing in this clause 43.7 will limit the State's rights against each PPP Co, whether under this deed or otherwise according to Law, in respect of any Defect or other failure to comply with clause 43.2.

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## 44. Dispute resolution

### 44.1 Procedure for resolving disputes

- (a) Unless a State Project Document provides otherwise, any dispute between the State and a PPP Co arising out of or in connection with the State Project Documents or the Project Activities (including questions concerning this deed's existence, meaning or validity) ("**Disputes**") must be resolved in accordance with the procedures set out in this clause 44.
- (b) The sequential procedure that is to be followed to resolve a Dispute is as follows:
- (i) **(Negotiation):** Firstly, the Dispute must be negotiated in accordance with clause 44.2;
  - (ii) **(Expert determination):** Secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2 and the dispute is one of the following:
    - A. a Dispute in relation to a matter set out in a PPP Cos' Modification Notice;
    - B. a Dispute in relation to a matter determined by the State under clause 22.1(l) or clause 22.1(o);
    - C. a Dispute as to the manner and timing of the payment of any Modification Savings;
    - D. a Dispute concerning the Independent Verifier's opinion under clause 20.8;
    - E. a Dispute under clause 20.15(d) regarding the budget or other fee arrangement for a Customer Service Audit;
    - F. a Dispute as to the existence of a Compensable Enhancement or an amount under clause 23.2(a)(ii);
    - G. a Dispute as to the existence of a Negative Compensable Enhancement or an amount under clause 23.2(c)(iv);
    - H. a Dispute as to:
      - 1) whether or not a notice under clause 26.2 is valid;

- 2) whether or not the relevant Possible MAE Event has occurred;
  - 3) if a Possible MAE Event has occurred, whether it has had, or has started to have, or will have, a Material Adverse Effect; or
  - 4) a method of redress so as to achieve the objectives referred to in clause 26.6;
- I. a Dispute as to any insurance liability limit, sub-limit or deductible referred for dispute resolution pursuant to clause 30.11(c)(i);
  - J. a Dispute as to the amount of any Refinancing Gain or the manner or timing of payment of the State's share of the Refinancing Gain;
  - K. a Dispute as to the reasonableness, accuracy or relevance of any revision to the Base Case Financial Model under clause 36.9(b)(ii) following the implementation of a Refinancing;
  - L. a Dispute as to the reasonableness, accuracy or relevance of any revision to the Financial Model specified by a person nominated by the State under clause 36.3;
  - M. a Dispute as referred to in clause 41.2(f);
  - N. a Dispute as to a matter referred to in clause 43.1(b); or
  - O. a Dispute in relation to the Handover Amount referred to in clause 43.7(a)(iii),

then the Dispute must be referred to expert determination in accordance with clauses 44.3 to 44.8 (inclusive); and

(iii) **(Arbitration):** Thirdly, if:

- A. the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2 and the Dispute is not one of those referred to in clause 44.1(b)(ii); or
- B. the Dispute has been referred to expert determination and;
  - 1) a determination is not made by the expert within 60 days after the expert's acceptance of appointment; or
  - 2) a notice of dissatisfaction is given under clause 44.6(a);

then the Dispute must be referred to arbitration in accordance with clauses 44.9 to 44.11 (inclusive).

- (c) It is a condition precedent to a party being entitled to refer a Dispute to arbitration in accordance with clauses 44.9 to 44.11 (inclusive) that the procedures referred to in clauses 44.1(b)(i) and 44.1(b)(ii) (as applicable) first be complied with.

## **44.2 Negotiation**

- (a) If a Dispute arises then a party may give notice to the other party requesting that the Dispute be referred for resolution by negotiation between the Director-General of the Department that has, at the relevant time, responsibility for administering the Transport Infrastructure Act and the chief executive officer of the relevant PPP Co or their respective nominees (the "**Representatives**").
- (b) A notice under clause 44.2(a) must:
  - (i) state that it is a notice under this clause 44.2; and
  - (ii) include or be accompanied by reasonable particulars of the matters the subject of the Dispute.
- (c) If a Dispute is referred for resolution by negotiation under clause 44.2(a), then the Representatives must meet and use reasonable endeavours acting in good faith to resolve the Dispute (in whole or in part) within 5 Business Days of the date on which the notice under clause 44.2(a) is received (or such later date as the parties may agree). The joint decision (if any) of the Representatives will be reduced to writing and will be contractually binding on the parties.

## **44.3 Expert determination**

- (a) If a Dispute which has been referred to the Representatives for negotiation pursuant to clause 44.2 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c) and the Dispute is one of those referred to in clause 44.1(b)(ii) then any party may by giving notice to the other party in accordance with clause 44.3(b) require that those parts of the Dispute which remain unresolved be referred to an expert for determination in accordance with clauses 44.4 to 44.8 (inclusive).
- (b) A notice under clause 44.3(a) must:
  - (i) be given no earlier than 10 Business Days and no later than 60 Business Days after the expiry of the period for negotiation referred to in clause 44.2(c);
  - (ii) state that it is a notice under this clause 44.3; and
  - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

## **44.4 Selection of expert**

- (a) Within 7 Business Days after the date of the notice under clause 44.3(a), the State and the relevant PPP Co must exchange written lists of 3 persons who, if appointed, would satisfy the requirements of clause 44.4(c), from whom the expert is to be chosen in order of preference.
- (b) Any person that appears on both lists under clause 44.4(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the

person given the highest order of priority by the party that gave the notice under clause 44.3(a) will be appointed.

If no person appears on both lists, the party which gave the notice under clause 44.3(a) must procure the Secretary-General of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert.

- (c) It is the intention of the parties that the expert appointed to determine a Dispute will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (d) Neither party will be entitled to challenge the appointment of an expert under this clause 44.4 on the basis that the expert does not satisfy the requirements of clause 44.4(c).
- (e) Any agreement for expert determination under this deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 1990* (Qld).
- (f) The State and the relevant PPP Co must enter into an agreement with the expert on the terms of Schedule 10 or such other reasonable terms as the expert may require.

#### **44.5 Rules of expert determination**

The expert determination process will be administered, and the expert will be required to act in accordance with the terms of the agreement in Schedule 10.

#### **44.6 Expert finding**

- (a) The determination of the expert must be in writing and will be final and binding on the State and the relevant PPP Co unless within 10 Business Days of receipt of the determination, a party gives notice to each other party of its dissatisfaction and intention to refer the matter to arbitration pursuant to clauses 44.9 to 44.11 (inclusive).
- (b) Upon submission by any party, the expert may amend the determination to correct:
  - (i) a clerical mistake;
  - (ii) an error from an accidental slip or omission;
  - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
  - (iv) a defect in form.

#### **44.7 Liability of expert**

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

#### **44.8 Costs**

The State and the relevant PPP Co must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert.

#### **44.9 Arbitration**

- (a) If:
- (i) a Dispute which has been referred to the Representatives for negotiation pursuant to clause 44.2 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 44.2(c) and the Dispute is not one of those referred to in clause 44.1(b)(ii); or
  - (ii) in the case of a Dispute which is referred to expert determination:
    - A. a determination is not made within 60 days of the expert's acceptance of the appointment; or
    - B. a notice of dissatisfaction is given under clause 44.6(a);
- then the State or the relevant PPP Co may notify the other that it requires the Dispute to be referred to arbitration.
- (b) Upon receipt by the other party of a notice under clause 44.9(a) the Dispute will then be referred to arbitration.

#### **44.10 Identity of arbitrator**

Any arbitration under clause 44.9 must be conducted by a single arbitrator to be agreed between the parties or, failing such agreement within 10 Business Days after referral of the Dispute to arbitration under clause 44.9(b), then at the insistence of either party by an arbitrator to be nominated by the Secretary-General of the Australian Centre for International Commercial Arbitration.

#### **44.11 Rules for conduct of arbitration**

Except as otherwise expressly provided in this clause 44, an arbitration under this clause will be conducted as follows:

- (a) if the arbitration is in respect of a matter which has been the subject of an expert determination, in accordance with the Expedited Arbitration Rules set out in Schedule 11; or
- (b) otherwise, in accordance with the Arbitration Rules of the Australian Centre for International Commercial Arbitration current at the date of reference of the dispute to arbitration,

provided that notwithstanding anything else, to the extent permissible by law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration pursuant to this clause 44.

#### **44.12 Place of expert determination or arbitration**

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

#### **44.13 Continue to perform**

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the State Project Documents.

#### **44.14 Summary or urgent relief**

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

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### **45. Notices and time bar**

#### **45.1 Notices**

All communications (including notices, consents, approvals, requests and demands) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

##### **The State**

Name: Department of Transport and Main Roads  
Address: Floor 21, Terrica Place  
140 Creek Street  
Brisbane Qld 4000  
For the attention of: Matthew Longland, State's Representative

##### **TQ Operations**

Name: APL Co Pty Limited  
Address: Level 23, Tower One, Collins Square  
727 Collins Street  
Docklands VIC 3008  
Fax: +61 03 6949 7380  
For the attention of: Company Secretary

##### **TQ Trustee**

Name: TQ APL Asset Co Pty Limited  
Address: Level 23, Tower One, Collins Square  
727 Collins Street  
Docklands VIC 3008  
Fax: +61 03 6949 7380  
For the attention of: Company Secretary

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 45.1(b); and
- (e) are taken to be received by the addressee:

- (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
- (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day; and
- (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 45.1(b), unless that delivery is outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day.

## **45.2 Notices of Claims**

Subject to any provisions of this deed, the EWAG Works Deed or the NB Works Deed containing specific notice requirements, the State will not be liable upon any Claim by the PPP Cos arising out of or in any way in connection with any act or omission of, or breach of a provision of this deed, the EWAG Works Deed or the NB Works Deed by, the State or any other fact, matter or thing, under, arising out of, or in connection with the Projects or the Project Activities unless a PPP Co gives the State the notices required by clause 45.3 and, if applicable, clause 45.4.

## **45.3 Prescribed notices**

Notices referred to in 45.2 are:

- (a) a written notice from a PPP Co in which that PPP Co states that it intends to submit a Claim and the event on which the Claim will be based and which must be given to the State within the earlier of:
  - (i) 15 Business Days of when that PPP Co first became aware of the events on which the Claim is based; or
  - (ii) 45 Business Days of the first occurrence of the event on which the Claim is based (provided that, if that PPP Co reasonably demonstrates that the event is not something of which it ought reasonably to have been aware within that 45 Business Day Period, the period for submission of the notice will be extended to 15 Business Days after that PPP Co first became aware of, or ought reasonably to have become aware of, that event); and
- (b) a written Claim by a PPP Co to be given to the State within 20 Business Days of giving notice under clause 45.3(a) and which must include:
  - (i) detailed particulars concerning the events on which the Claim is based;
  - (ii) the legal basis for the Claim whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and

- (iv) details of the amount claimed and how it has been calculated.

#### **45.4 Continuing events**

If the events upon which the Claim under clause 45.3(b) is based or the consequences of the events are continuing, the relevant PPP Co must continue to give information required by clause 45.3(b) every 20 Business Days after the written Claim under clause 45.3(b) was submitted, until after the events or consequences have ceased.

#### **45.5 Notice to each PPP Co**

- (a) **(Valid service):** Service of any notice under or in respect of a State Project Document on a PPP Co is deemed to be valid service on each PPP Co.
- (b) **(No obligation to enquire):** A notice issued by the State or its Associates to a PPP Co under or in respect of any State Project Document is deemed to be duly sent to each PPP Co in respect of the respective rights and obligations of each PPP Co, without the State or its Associate being required to identify in the notice which obligations or rights relate to a particular PPP Co.
- (c) **(No right to dispute):** Without derogating from the separate rights and obligations of each PPP Co under the State Project Documents, a PPP Co will not be entitled to claim that any notice issued by the State or its Associate to a particular PPP Co ought to have been issued to the other PPP Co, or that a notice issued to the other PPP Co ought to have been issued to it.

#### **45.6 Notice by each PPP Co**

- (a) **(Valid service):** Service of any notice under or in respect of a State Project Document by a PPP Co is deemed to be valid notice by each PPP Co.
- (b) **(No obligation to enquire):** A notice issued by a PPP Co to the State or its Associates under or in respect of any State Project Document will be deemed to be duly sent by each PPP Co, in respect of their respective rights and obligations, without the State or its Associates being required to enquire as to which obligations or rights relate to a particular PPP Co.
- (c) **(No right to dispute):** Without derogating from the separate rights and obligations of each PPP Co under the State Project Documents, a PPP Co will not be entitled to claim that a notice issued to the State or its Associate by a particular PPP Co ought to have been issued by the other PPP Co, or that a notice issued by the other PPP Co ought to have been issued by it.
- (d) **(Subsequent notices invalid):** The State and its Associates are entitled to rely solely upon and act solely upon the notice received from a PPP Co in relation to any matter arising under or in connection with any State Project Document and the purported service by the other PPP Co of any notice relating to or arising out of the same matter will be ineffective and the State will be entitled to disregard that subsequent notice.

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## **46. Governing law and jurisdiction**

### **46.1 Governing law**

This deed is governed by and must be construed according to the laws of Queensland.

## **46.2 Jurisdiction**

Without limiting clause 44, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 46.2(a).

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## **47. Miscellaneous**

### **47.1 Entire Agreement**

To the extent permitted by law, in relation to its subject matter, this deed and the other State Project Documents:

- (a) embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) supersede any prior written or other agreement of the parties.

### **47.2 Further acts and documents**

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

### **47.3 Survival of certain provisions; no merger**

- (a) Without limiting clause 47.11(a), clauses 5, 6.1, 6.2, 6.4, 23.3, 23.4, 23.5, 28.2, 28.4, 38.1, 39, 40, 41.3(c), 41.6, 41.7, 41.9, 43, 44, 45, 46, this clause 47.3 and any other provision which expressly or by implication from its nature is intended to survive termination (together, the "**Surviving Clauses**") will survive rescission, termination or expiration of this deed.
- (b) Without limiting clause 47.11(a), if this deed is rescinded or terminated, no party will be liable to any other party except:
  - (i) under the Surviving Clauses; or
  - (ii) subject to clause 41.7(b)(ii), in respect of any breach of this deed occurring before such rescission or termination.
- (c) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (d) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

#### **47.4 Waiver**

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

#### **47.5 Consents**

- (a) A consent required under this deed from the State may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.
- (b) A consent required under this deed from a PPP Co may not be unreasonably withheld, unless this deed expressly provides otherwise.

#### **47.6 Amendments**

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

#### **47.7 Expenses**

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

#### **47.8 Severance**

If at any time any provision of this deed or any other State Project Document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed or the other relevant State Project Document; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed or the other relevant State Project Document.

#### **47.9 No representation or reliance**

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

#### **47.10 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.

#### **47.11 Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

#### **47.12 Moratorium legislation**

To the fullest extent permitted by law, the provisions of all laws which at any time operate directly or indirectly to lessen or affect in favour of a PPP Co any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by the State of any right, power or remedy under this deed or otherwise, are expressly waived.

#### **47.13 No agency**

Except as expressly permitted or contemplated by this deed, a PPP Co must not, in connection with the Projects or otherwise, directly or indirectly hold out or permit to be held out to any person any statement, act, agreement, matter or thing indicating that the Projects are being carried on or managed or supervised by the State nor may a PPP Co act as or represent itself to be the servant or agent of the State.

## Schedule 1 (Conditions Precedent)

### (Clause 2)

Condition Precedent	Benefiting Party	Condition Precedent Deadline Date
<p>1. <b>Project Documents</b></p> <p>Execution of all other Project Documents (excluding the Lease and the mortgage of that Lease) and the satisfaction or waiver of all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this deed).</p>	<p>The State and the BrisConnections Parties</p>	<p>1 August 2008</p>
<p>2. <b>Approvals</b></p> <p>A declaration being made pursuant to section 93 of the Transport Infrastructure Act that the AL Project is a "toll road" and the terms of that declaration do not materially alter or conflict with the parties rights and obligations under this deed.</p>	<p>The State and the BrisConnections Parties</p>	<p>1 August 2008</p>
<p>3. <b>Bonds</b></p> <p>The State receiving the D&amp;C Bond, the EWAG Bonds and the NB Bonds.</p>	<p>The State</p>	<p>1 August 2008</p>
<p>4. <b>D&amp;C Phase insurances</b></p> <p>The insurances specified in clause 30.1 being effected in the form of the wording set out in exhibit C or as otherwise agreed by the parties, and a certified copy of the fully subscribed and executed insurance policies being provided to the State.</p>	<p>The State</p>	<p>1 August 2008</p>
<p>5. <b>Tax Ruling</b></p> <p>The State receiving, jointly with the BrisConnections Parties, a binding private ruling from the ATO in a form and substance satisfactory to the State in relation to the GST treatment of the non-monetary consideration that will be provided by the State to the BrisConnections Parties and by the BrisConnections Parties to the State.</p>	<p>The State and the BrisConnections Parties</p>	<p>1 August 2008</p>
<p>6. <b>FIRB approvals</b></p> <p>The State receiving a certified copy of the approval of the Foreign Investment Review Board of the Commonwealth Department of Treasury in respect of any foreign ownership of any Equity Investor.</p>	<p>The State and the BrisConnections Parties</p>	<p>1 August 2008</p>

Condition Precedent	Benefiting Party	Condition Precedent Deadline Date
<p>7. <b>Base Case Financial Model</b></p> <p>The State receiving:</p> <p>(a) a printout and electronic copy of the Base Case Financial Model with the print out initialled for identification by the legal advisers of each party;</p> <p>(b) a letter in a form and substance satisfactory to the State and addressed to the State confirming that the Base Case Financial Model is identical to the model previously provided to the State, except as set out in the letter; and</p> <p>(c) an audit report on the Base Case Financial Model in a form and substance acceptable to the State and addressed to the State by an auditor acceptable to the State.</p>	The State	1 August 2008
<p>8. <b>Counterparty Details</b></p> <p>The State receiving the Counterparty Details.</p>	The State	1 August 2008
<p>9. <b>QBSA Licence</b></p> <p>The State receiving evidence satisfactory to it that the BrisConnections Parties, the Original State Works Contractor and the Original NB Works Contractor hold a contractor's licence of the appropriate class under the <i>Queensland Building Services Authority Act 1991</i> (Qld).</p>	The State	1 August 2008
<p>10. <b>Native Title</b></p> <p>The State satisfying itself in relation to the processes required under the <i>Native Title Act 1993</i> (Cth) to allow for the Projects to be carried out in accordance with the State Project Documents.</p>	The State	1 August 2008
<p>11. <b>Cultural Heritage Management Plan</b></p> <p>The Cultural Heritage Management Plan is substantially consistent with the terms of the following documents provided by the State to the BrisConnections Parties on 10 April 2008 or such other terms as are agreed by the parties:</p> <p>(a) the CHMP between the State of Queensland acting through the Department of Infrastructure and Planning, Connie Isaacs and Turrbal</p>	The State and the BrisConnections Parties	1 August 2008

Condition Precedent	Benefiting Party	Condition Precedent Deadline Date
<p>Association Inc dated 13 March 2008; and</p> <p>(b) the CHMP between the State of Queensland acting through the Department of Infrastructure and Planning, Caroline Joyce Bonner-Bray, Madonna Thomson (nee Williams), Kenneth Henry Bonner, Clarence William Bonner, James Bonner and Jagera Daran Pty Ltd dated 13 March 2008.</p>		
<p>12. <b>Design and Construction Environmental Management Plan</b></p> <p>The State receiving from the BrisConnections Parties a Design and Construction Environmental Management Plan for the D&amp;C Phase which complies with the requirements of the State Project Documents to the satisfaction of the State.</p>	The State	1 August 2008
<p>13. <b>First Change Report</b></p> <p>Receipt of the First Change Report and amendment of the Project Documents to the reasonable satisfaction of the State and the BrisConnections Parties to the extent required to take account of any changed or new conditions to the Planning Approval arising from the First Change Report which are not subject to the prior agreement of the parties.</p>	The State and the BrisConnections Parties	1 August 2008
<p>14. <b>Principal Contractor</b></p> <p>The State being satisfied that it has duly appointed the D&amp;C Contractor or one of the entities that comprises the D&amp;C Contractor as the principal contractor for all of the works to be carried out on the Construction Site in accordance with section 184A of the Workplace Health &amp; Safety Act 1995 (Qld) ("WH&amp;S Act"), including (if necessary) receipt from the BrisConnections Parties of the written approval of the chief executive (for the purposes of the WH&amp;S Act) to appoint more than 1 principal contractor for the Projects.</p>	The State	1 August 2008

## Schedule 2 (Form of Bond)

(Clauses 1.1 and 5.1)

This deed poll ("**Bond**") made the \_\_\_\_\_ day of \_\_\_\_\_ 20

In favour of: **The State of Queensland**, of [ \_\_\_\_\_ ] ("**the State**")

Given by: \_\_\_\_\_ ("**Bank**")

### Recitals

- A. By a deed dated [ \_\_\_\_\_ ] ("**Project Deed**") between APL Co Pty Limited ACN 609 262 615 and TQ APL Asset Co Pty Limited ACN 609 390 454 as trustee of the TQ APL Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") and the State, the PPP Cos agreed to carry out certain works.
- B. Under the provisions of the Project Deed, a PPP Co is required to provide this Bond to the State.

### This deed poll provides

1. The Bank unconditionally and irrevocably undertakes and covenants to pay to the State forthwith upon demand without reference to either PPP Co and notwithstanding any notice given by either PPP Co to the Bank not to do so, any sum or sums which may from time to time be demanded in writing by the State to a maximum aggregate sum of [ \_\_\_\_\_ ].
2. The Bank's liability under this Bond will be a continuing liability and will continue until payment is made under this Bond of the maximum aggregate sum or the State notifies the Bank that this Bond is no longer required.
3. The liability of the Bank under this Bond will not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Bank) in any of the stipulations or provisions of the State Project Documents or acts or things to be executed, performed and done under the State Project Documents or by reason of any breach or breaches of the State Project Documents by either PPP Co or the State.
4. This Bond will be governed by and construed in accordance with the laws for the time being of Queensland.
5. Terms defined in the Project Deed have the same meaning in this Bond.

**Signed** as a deed poll.

**Signed sealed and delivered** for and on behalf of [ \_\_\_\_\_ ] by [ \_\_\_\_\_ ] its Attorney under a Power of Attorney dated \_\_\_\_\_ and registered Book \_\_\_\_\_ No. \_\_\_\_\_ and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

### Schedule 3 (Consumer Price Index)

#### (Clause 1.1)

"Consumer Price Index" or "CPI" means:

- (a) the "All Groups Consumer Price Index Brisbane" ("**CPIB**") published quarterly by the Australian Bureau of Statistics, as long as there is no change in the coverage, periodicity or reference base from those applying at the date of this deed. Unless otherwise specified, the base CPI for the purposes of this deed will be the CPIB published by the Australian Bureau of Statistics for the last full Quarter ending immediately prior to the date of this deed;
- (b) if there is a change in the coverage of the CPIB from that applying at the date of this deed and the new CPIB is linked to previous All Groups Consumer Price Indexes, CPI is the new CPIB;
- (c) if there is a change in the reference base of the CPIB from that applying at the date of this deed and the Australian Bureau of Statistics provides a conversion factor, that conversion factor must be applied to calculate revised CPI figures for the purpose of this deed, in terms of the new reference base;
- (d) if there is a change in the reference base of the CPIB from that applying at the date of this deed and the Australian Bureau of Statistics does not provide a conversion factor, the parties must request the President of The Institute of Actuaries (or his nominee) to calculate revised CPIs for the purposes of this deed, and his determination is final and binds the parties;
- (e) if the CPIB is published and:
  - (i) there is a change in its coverage and it is not linked to previous All Groups Consumer Price Indexes; or
  - (ii) there is a change in its periodicity,the parties must request the President of the Institute of Actuaries (or his nominee) to determine:
  - (iii) whether the new CPIB is appropriate as a general indicator of the rate of price change for consumer goods and services; or
  - (iv) if it is not, what other index should be used as a substitute index for the purpose of this deed,and his determination is final and binds the parties;
- (f) if the CPIB is not published and the Australian Bureau of Statistics publishes another index which is:
  - (i) a replacement of the CPIB; and
  - (ii) linked to the CPIB,all CPIs relevant to this deed must be re-calculated to the same reference base as the replacement index;
- (g) if the CPIB is not published and the Australian Bureau of Statistics publishes another index which is not linked to the CPIB, the parties must request the President

of the Institute of Actuaries (or his nominee) to calculate revised CPIs for the purposes of this deed, and his calculation is final and binds the parties; or

- (h) if the CPIB is not published and the Australian Bureau of Statistics does not publish another index in replacement of the CPIB, the parties must request the President of the Institute of Actuaries (or his nominee) to determine an appropriate index which is a general indicator of the rate of price change for consumer goods and services, and his determination is final and binds the parties.

If paragraph (e), (g) or (h) applies, paragraphs (a) to (h) will apply to the index determined in accordance with paragraph (e), (g) or (h) (as the case may be) as if all references to the CPIB are references to that replacement index.

## Schedule 4 (Planning Approval)

### (Clause 9.1)

The relevant PPP Co must fulfil all the conditions and requirements of the Planning Approval except to the extent the following table allocates responsibilities to the State. The relevant PPP Co must also fulfil the requirements of the following table to the extent that responsibilities are allocated to the PPP Cos.

Condition No.	Extent of the State's responsibility for the condition specified
Coordinator-General Recommendation 5(a)	<p>The State shall establish a Construction Liaison Committee comprising representatives from the Queensland Government (including Queensland Transport, Department of Main Roads, Office of Urban Management, Department of Emergency Services and Department of Infrastructure) and the Brisbane City Council to:</p> <ul style="list-style-type: none"> <li>(i) share information about the concurrent major transport projects;</li> <li>(ii) allow the cumulative construction impacts from all projects to be managed and mitigated; and</li> <li>(iii) communicate with existing traffic management and emergency response planning and operational coordination entities involving, Department of Main Roads, Queensland Transport, Department of Emergency Services and Brisbane City Council.</li> </ul>
Coordinator-General Recommendation 6	<p>The State shall liaise with the Office of Urban Management and the Brisbane City Council, given the potential for changes to the regional and local planning frameworks brought about by the Airport Link Project, to assist in identifying urban regeneration opportunities which arise because of Airport Link. Opportunities for integrated land use and transport should be identified through this planning process.</p>
Appendix 1, Schedule 2 Condition 1(a)	<p>The State must develop and have approved under the <i>Aboriginal Cultural Heritage Act 2003</i>, a Cultural Heritage Management Plan (CHMP) prior to any excavation, construction or other activity that may cause harm to Aboriginal cultural heritage.</p>
Appendix 1, Schedule 3 Condition 3(a)	<p>The State will fulfil the requirements of the condition in so far as it relates to urban regeneration (urban mitigation) categories and locations remote from works as specified below:</p> <p><b>Toombul/Clayfield:</b></p> <p>Urban design – Boulevard works for Rose Street and Junction Road;</p> <p>Open space – Melrose Park, Kalinga – Reinstate park and mitigate infrastructure;</p> <p><b>Kedron/Lutwyche:</b></p> <p>Urban design – Boulevard Works for Park Road;</p> <p>Open Space – east end of Fifth Ave adjacent to Kedron Brook – develop park and comprehensively landscaped space, amenities and BBQ facilities, and lighting;</p> <p><b>Windsor:</b></p> <p>Pedestrian &amp; Cycleways – Windsor and Lutwyche (Chalk Street, McLennan Street, Lane Street, Windsor Park and Flynn Oval).</p>

## Schedule 5 (Certification Schedule)

The PPP Cos must provide to the State certificates and notices in the form set out in Parts 1 to 50 of this schedule executed by the person specified in and otherwise in accordance with this schedule:

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
1	Quality Manager's Certificate - Quality System	Quality Manager	The PPP Cos must provide the certificate to the State and the Independent Verifier on the date which is 3 months after the Date of Financial Close.	7.1(c) Project Deed
2	Independent Verifier's Certificate - Quality System	Independent Verifier	Independent Verifier must provide the Certificate to the State on the date which is 1 month after the Independent Verifier receives a copy of the Quality Manager's Certificate - Quality System.	7.2 Project Deed
3	PPP Cos' Certificate - Design Documentation	The PPP Cos	The PPP Cos must provide the certificate to the State in accordance with clause 13.2(d)(i) of the Project Deed.	13.2(d)(i) Project Deed
4	Designer's Certificate - Design Documentation	Designer	The PPP Cos must provide the certificate in accordance with clause 13.2(d)(ii) of the Project Deed.	13.2(d)(ii) Project Deed
5	Proof Engineer and Construction Verifier's Certificate - Design Documentation	Proof Engineer and Construction Verifier	The PPP Cos must provide the certificate in accordance with clause 13.2(d)(iii) of the Project Deed.	13.2(d)(iii) Project Deed
6	Independent Verifier's Certificate - Design Verification	Independent Verifier	The Independent Verifier must provide the certificate to the State:  (a) in accordance with clause 13.3(d) of the Project Deed; and  (b) as a condition precedent to Close-Out.	13.3(d) Project Deed
7	Quality Manager's Certificate - Progressive Design and Construction Certification	Quality Manager	The PPP Cos must provide a certificate from the Quality Manager to the State and the Independent Verifier:  (a) on the date which is 3 months after the Date of Financial Close; and  (b) on the date which is every successive 3 months thereafter	7.1(c) Project Deed

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
			<p>until the Date of Close-Out.</p> <p>(c) as a condition precedent to Close-Out.</p>	
8	PPP Cos' Certificate - Progressive Design and Construction Certification	A PPP Co	<p>The relevant PPP Co must provide the certificate to the State:</p> <p>(a) on the date which is 3 months after the Date of Financial Close;</p> <p>(b) on the date which is every successive 3 months thereafter until the Date of Close-Out; and</p> <p>(c) as a condition precedent to Close-Out.</p>	7.1(c) and 14.2(c)(i) Project Deed
9	Designer's Certificate - Progressive Design and Construction Certification	Designer	<p>The relevant PPP Co must provide a certificate from the Designer to the State:</p> <p>(a) on the date which is 3 months after the Date of Financial Close;</p> <p>(b) on the date which is every successive 3 months thereafter until the Date of Close-Out; and</p> <p>(c) as a condition precedent to Close-Out.</p>	14.2(c)(ii) Project Deed
10	Not used			
11	PPP Cos' Certificate - Rectification of Non-Compliance	A PPP Co	The relevant PPP Co must provide the certificate in accordance with clause 14.2(h)(ii) of the Project Deed.	14.2(h)(ii) Project Deed
12	Independent Verifier's Certificate - Progressive Design and Construction Verification	Independent Verifier	<p>The Independent Verifier must provide the certificate to the State:</p> <p>(a) on the date which is 3 months after the Date of Financial Close;</p> <p>(b) on the date which is every successive 3 months thereafter until the Date of Close-Out; and</p> <p>(c) as a condition precedent to Close-Out.</p>	14.2 Project Deed

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
13	Quality Manager's Certificate - Completion	Quality Manager	The PPP Cos must provide this certificate to the State and the Independent Verifier as a condition precedent to Close-Out.	7.1(c) Project Deed
14	PPP Cos' Notice of Tollroad Completion	The PPP Cos	The PPP Cos must provide the notice to the State and the Independent Verifier when it considers it has achieved Tollroad Completion.	16.3(a)(ii)A Project Deed
15	PPP Cos' Notice of Tolling System Completion	The PPP Cos	The PPP Cos must provide the notice to the State and the Independent Verifier when it considers it has achieved Tolling System Completion.	16.3(a)(ii)B Project Deed
16	Independent Verifier's Certificate of Tollroad Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 16.3(c)(i)A of the Project Deed.	16.3(c)(i)A Project Deed
17	Independent Verifier's Certificate of Tolling System Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 16.3(c)(i)A of the Project Deed.	16.3(c)(i)A Project Deed
18	PPP Cos' Notice of Close-Out	The PPP Cos	The PPP Cos must provide the notice to the State and the Independent Verifier as a condition precedent to Close-Out.	17.1(b)Project Deed
19	Independent Verifier's Certificate of Close-Out	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 17.1(c) of the Project Deed.	17.1(c) Project Deed
20	Notice by the PPP Cos (Returned Works)	A PPP Co	The relevant PPP Co must provide the notice in accordance with clause 14.5(b)(iv)B of the Project Deed.	14.5(b)(iv)B Project Deed
21	Notice by Facility Owner	Facility Owner	The relevant PPP Co must provide the notice in accordance with clause 14.5(b)(iv)A of the Project Deed.	14.5(b)(iv)A Project Deed
22	Notice by Independent Verifier (Returned Works)	Independent Verifier	The relevant PPP Co must provide the notice in accordance with clause 14.5(b)(iii) of the Project Deed.	14.5(b)(iii) Project Deed
23	Quality Manager's Certificate - Progressive O&M Certification	Quality Manager	The PPP Cos must provide the certificate to the State and the Independent Verifier: (a) on the date which is 6	7.1(c) Project Deed

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
			<p>months after the start of the O&amp;M Phase; and</p> <p>(b) on the date which is every successive 6 months thereafter until the expiry of the O&amp;M Phase.</p>	
24	Independent Verifier's Certificate - Progressive O&M Verification	Independent Verifier	<p>The PPP Cos must provide the certificate to the State:</p> <p>(a) on the date which is 6 months after the start of the O&amp;M Phase; and</p> <p>(b) on the date which is every successive 6 months thereafter, for a period of 2 years after the start of the O&amp;M Phase.</p>	7.2 Project Deed
25	Independent Verifier's Certificate - Last DLP	Independent Verifier	The PPP Cos must provide the certificate to the State on the Last DLP.	7.2 Project Deed
26	PPP Cos' Certificate - End of the Concession Period	The PPP Cos	The PPP Cos must provide the certificate to the State on the expiry of the Concession Period.	7.1(c) Project Deed
27	NB Works Contractor's Notice of NB Practical Completion	The NB Works Contractor	The NB Works Contractor must provide the notice to the State and the Independent Verifier when it considers it has achieved NB Practical Completion.	9.2(a) NB Works Deed
27A	NB Works Contractor's Notice of EWAG Practical Completion	The NB Works Contractor	The NB Works Contractor must provide the notice to the State and the Independent Verifier when it considers it has achieved EWAG Practical Completion.	14.1 EWAG Works Deed
28	Independent Verifier's Certificate of NB Practical Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 9.2(c)(i) of the NB Works Deed.	9.2(c)(i) NB Works Deed
28A	Independent Verifier's Certificate of EWAG Practical Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 14.3(c)(i) of the EWAG Works Deed.	14.3(c)(i) EWAG Works Deed

<b>Part of the Schedule containing the form</b>	<b>Title of Certificate/Notice</b>	<b>Issuer of Certificate/ Notice</b>	<b>Circumstances Certificate/Notice required</b>	<b>Clause of the Project Deed/ NB Works Deed/EWAG Works Deed</b>
29	NB Works Contractor's Notice of NB Final Completion	The NB Works Contractor	The NB Works Contractor must provide the notice to the State and the Independent Verifier when it considers it has achieved NB Final Completion.	10.1(b) NB Works Deed
29A	NB Works Contractor's Notice of EWAG Final Completion	The NB Works Contractor	The NB Works Contractor must provide the notice to the State and the Independent Verifier when it considers it has achieved EWAG Final Completion.	15.1(b) EWAG Works Deed
30	Independent Verifier's Certificate of NB Final Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 10.1(c)(i) of the NB Works Deed.	10.1(c)(i) NB Works Deed
30A	Independent Verifier's Certificate of EWAG Final Completion	Independent Verifier	The Independent Verifier must provide the certificate in accordance with clause 15.1(c)(i) of the EWAG Works Deed.	15.1(c)(i) EWAG Works Deed
31	NB Payment Claim	The NB Works Contractor	The NB Works Contractor must submit a payment claim to the Independent Verifier (with a copy for the State) in accordance with clause 14.2 of the NB Works Deed.	14.2 NB Works Deed
31A	EWAG Payment Claim	The NB Works Contractor	The NB Works Contractor must submit a payment claim to the Independent Verifier (with a copy for the State) in accordance with clause 19.2 of the EWAG Works Deed.	19.2 EWAG Works Deed
32	NB Certificate of Value	The NB Works Contractor	The NB Works Contractor must provide the certificate with each payment claim in accordance with clause 14.2(d) of the NB Works Deed.	14.2(c)(iv) NB Works Deed
32A	EWAG Certificate of Value	The NB Works Contractor	The NB Works Contractor must provide the certificate with each payment claim in accordance with clause 19.2(c)(iv) of the EWAG Works Deed.	19.2(c)(iv) EWAG Works Deed
33	NB Payment Statement	Independent Verifier	The Independent Verifier must provide the statement in accordance with clause 14.3 of the NB Works Deed.	14.3 NB Works Deed
33A	EWAG Payment Statement	Independent Verifier	The Independent Verifier must provide the statement in accordance with clause	19.3 EWAG Works Deed

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
			19.3 of the EWAG Works Deed.	
34	PPP Cos' Certificate - As-Built Documentation	The PPP Cos	The PPP Cos must provide the certificate in relation to As-Built Documentation in accordance with the Documentation Schedule.	N/A
35	Independent Verifier's Certificate - As-Built Documentation	Independent Verifier	Independent Verifier must verify the As-Built Documentation received from the PPP Cos in accordance with the Documentation Schedule.	N/A
36	Proof Engineering & Construction Verifier's Certificate – Design Verification	Proof Engineer & Construction Verifier	Proof Engineer & Construction Verifier must provide the certificate to the State in accordance with section 3.5.1(c)(ii) of Annexure 1 (Part 1) of the Performance Specification.	Section 3.5.1(c)(ii), Annexure 1, Performance Specification, Exhibit A Project Deed
37	Qualified Fire Engineer's Certificate – Fire Engineering Brief and Fire Engineering Reports	Qualified Fire Engineer	Qualified Fire Engineer must provide the certificate to the State in accordance with section 3.5.2(i)(iii) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.5.2(i)(iii), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
38	Qualified Fire Engineer's Certificate – Fire and Life Safety Design	Qualified Fire Engineer	Qualified Fire Engineer must provide the certificate to the State in accordance with section 3.5.2(i)(iv) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.5.2(i)(iv), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
39	Qualified Fire Engineer's Certificate – Fire and Life Safety Construction (AL Works)	Qualified Fire Engineer	Qualified Fire Engineer must provide the certificate to the State in accordance with section 3.5.2(i)(v) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.5.2(i)(v), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
40	Qualified Fire Engineer's Certificate – Fire and Life Safety	Qualified Fire Engineer	Qualified Fire Engineer must provide the certificate to the State in accordance with section 3.5.2(i)(v) of Annexure 1 (Part 1) to the Performance	Section 3.5.2(i)(v), Annexure 1 (Part 1),

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
	Construction (NB Works)		Specification.	Performance Specification, Exhibit A Project Deed
41	Equitable Access Consultant's Certificate – Equitable Access Design	Equitable Access Consultant	Equitable Access Consultant must provide the certificate to the State in accordance with section 3.7(a)(ii) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.7(a)(ii), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
42	Equitable Access Consultant's Certificate – Equitable Access Construction (AL Works)	Equitable Access Consultant	Equitable Access Consultant must provide the certificate to the State in accordance with section 3.7(b) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.7(b), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
43	Equitable Access Consultant's Certificate – Equitable Access Construction (NB Works)	Equitable Access Consultant	Equitable Access Consultant must provide the certificate to the State in accordance with section 3.7(c) of Annexure 1 (Part 1) to the Performance Specification.	Section 3.7(c), Annexure 1 (Part 1), Performance Specification, Exhibit A Project Deed
44	PPP Co's Certificate – As-built Document Certification (AL Works)	The PPP Cos	The PPP Cos must provide the certificate to the State in accordance with section 7.2(a)(i)-(ii) of Annexure 2 (Part 1) to the Performance Specification.	Section 7.2(a)(i)-(ii), Annexure 2 (Part 1), Performance Specification, Exhibit A Project Deed
45	NB Works Contractor's Certificate - As-built Document Certification (NB Works)	The NB Works Contractor	The NB Works Contractor must provide the certificate to the State in accordance with section 7.2(a)(i)-(ii) of Annexure 2 (Part 1) to the Performance Specification.	Section 7.2(a)(i)-(ii), Annexure 2 (Part 1), Performance Specification, Exhibit A to the Project Deed
45A	NB Works Contractor's	The NB Works	The NB Works Contractor must provide the certificate to the State in	Section 7.2(a)(i)-(ii),

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
	Certificate - As-built Document Certification (EWAG Works)	Contractor	accordance with section 7.2(a)(i)-(ii) of Annexure 1 (Part 1) to the Performance Specification.	Annexure 2 (Part 1), Performance Specification, Exhibit A to the Project Deed
46	Independent Verifier's Certificate – As-built Document Verification (AL Works)	Independent Verifier	The Independent Verifier must verify the As-built documents provided by the PPP Cos comply with the requirements of the State Project Documents.	Section 7.2(a)(i)-(ii), Annexure 2 (Part 1), Performance Specification, Exhibit A to the Project Deed
47	Independent Verifier's Certificate – As-built Document Verification (NB Works)	Independent Verifier	The Independent Verifier must verify the As-built documents provided by the NB Works Contractor comply with the requirements of the State Project Documents.	Section 7.2(a)(i)-(ii), Annexure 2 (Part 1), Performance Specification, Exhibit A to the Project Deed
47A	Independent Verifier's Certificate – As-built Document Verification (EWAG Works)	Independent Verifier	The Independent Verifier must verify the As-built documents provided by the NB Works Contractor comply with the requirements of the State Project Documents.	Section 7.2(a)(i)-(ii), Annexure 2 (Part 1), Performance Specification, Exhibit A to the Project Deed
48	Independent Verifier's Certificate – RSS certification	Independent Verifier	The Independent Verifier must provide the certificate to the State in accordance with section 6.7.21(g)(ii) of Annexure 1 (Part 1) to the Performance Specification.	Section 6.7.21(g)(ii), Annexure 1 (Part 1), Performance Specification, Exhibit A to the Project Deed
49	Notice by BAC - EWAG Practical Completion	BAC	NB Works Contractor must provide the notice in accordance with clause 14.2 of the EWAG Works Deed.	Clause 14.2 EWAG Works Deed.
50	Notice by BAC - Final Payment Claim	BAC	The NB Works Contractor must provide the notice in accordance with clause 19.12(a)(iii) of the EWAG	Clause 19.12(a)(iii) EWAG Works

Part of the Schedule containing the form	Title of Certificate/Notice	Issuer of Certificate/ Notice	Circumstances Certificate/Notice required	Clause of the Project Deed/ NB Works Deed/EWAG Works Deed
			Works Deed.	Deed

**Part 1**  
**Quality Manager's Certificate - Quality System**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**") (if applicable)  
**From:**     **Charles Doyle of John Holland Pty Ltd** ABN 11 004 282 268 ("**Quality Manager**")

In accordance with the terms of clause 7.1(c) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that the PPP Cos' quality system implemented under clause 7.1 of the Deed is in accordance with Annexures 9 and 10 to the Performance Specification and the requirements of AS/NZS ISO Standards.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed by Charles Doyle**

\_\_\_\_\_  
**Date**

**Part 2**  
**Independent Verifier's Certificate - Quality System**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of clause 7.2 of the Project Deed between the State and each PPP Co dated [*insert date*] ("**Deed**") with respect to the Projects, we hereby certify that the PPP Cos' quality system implemented under clause 7.1 of the Deed is in accordance with Annexures 9 and 10 to the Performance Specification and the requirements of AS/NZS ISO Standards.

Terms defined in the Deed have the same meaning in this certificate.

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**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

---

**Date**

**Part 3  
PPP Cos' Certificate - Design Documentation**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust**

In accordance with the terms of clause 13.2(d)(i) of the Project Deed between the State and **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust** (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that the attached Stage 2 Design Documentation:

- (a) complies with all the requirements of the State Project Documents including the Performance Specification, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (b) is documented to enable construction in compliance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
**BrisConnections Operations Pty Limited** ACN 128 615 547

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signed for and on behalf of**  
**BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

\_\_\_\_\_  
**Date**

**Part 4**  
**Designer's Certificate - Design Documentation**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** Parsons Brinckerhoff Pty Limited ABN 80 078 004 798 and Arup Pty Ltd ABN 18 000 966 165 (trading as the "**Parsons Brinckerhoff Arup Joint Venture**") ("**Designer**")

In accordance with the terms of clause 13.2(d)(ii) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that the attached Stage 2 Design Documentation:

- (a) complies with all the requirements of the State Project Documents including the Performance Specification, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (b) is documented to enable construction in compliance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
**Parsons Brinckerhoff Arup Joint Venture**

\_\_\_\_\_  
**Date**

**Part 5**  
**Proof Engineer & Construction Verifier's Certificate - Design Documentation**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:**       **The State of Queensland ("the State ")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:**     **Hans Huijben**

In accordance with the terms of clause 13.2(d)(iii) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that the attached Stage 2 Design Documentation:

- (a)       complies with all of the fire and life safety requirements of the State Project Documents;
- (b)       complies with all the requirements of the State Project Documents including the Performance Specification, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (c)       is documented to enable construction in compliance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

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**Signed by Hans Huijben**

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**Date**

**Part 6**  
**Independent Verifier's Certificate - Design Verification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of clause 13.3(d) of the Project Deed between the State and each PPP Co dated *[insert date]* ("**Deed**") with respect to the Projects, we hereby verify that the attached Stage 2 Design Documentation:

- (a) complies with all the requirements of the State Project Documents including the Performance Specification, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (b) is documented to enable construction in compliance with the State Project Documents.

The comments made by the State in respect of the Stage 2 Design Documentation are addressed in the Schedule to this certificate.

Terms defined in the Deed have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

\_\_\_\_\_  
**Date**

**Part 7**  
**Quality Manager's Certificate -**  
**Progressive Design and Construction Certification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**") (if applicable)  
**From:**    **Charles Doyle of John Holland Pty Ltd** ABN 11 004 282 268 ("**Quality Manager**")

In accordance with the terms of clause 7.1(c) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that between the following dates [*insert dates of preceding 3 month period*]:

- (a)        the PPP Cos' quality system implemented under clause 7.1 of the Deed was in accordance with the requirements of AS/NZS ISO Standards;
- (b)        the D&C Contractors' quality systems which form a part of the PPP Cos' quality system were in accordance with the requirements of AS/NZS ISO Standards;
- (c)        each PPP Co complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (d)        the release of hold points (as referred to in the PPP Cos' Quality Management Plan) was undertaken in accordance with the relevant procedures in the PPP Cos' Quality Management Plan;
- (e)        the design and construction by each PPP Co was undertaken in accordance with the State Project Documents; and
- (f)        all documentation was recorded and submitted to the Independent Verifier and the State in accordance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed by Charles Doyle**

\_\_\_\_\_  
**Date**

**Part 8  
PPP Cos' Certificate -  
Progressive Design and Construction Certification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust**

In accordance with the terms of clause 14.2(c)(i) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that between the following dates [*insert dates of preceding 3 month period*]:

- (a) the PPP Cos' quality system implemented under clause 7.1 of the Deed was in accordance with the requirements of AS/NZS ISO Standards;
- (b) the D&C Contractors' quality systems which form a part of the PPP Cos' quality system were in accordance with the requirements of AS/NZS ISO Standards;
- (c) each PPP Co complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (d) the release of hold points (as referred to in the PPP Cos' Quality Management Plan) was undertaken in accordance with the relevant procedures in the PPP Cos' Quality Management Plan;
- (e) the design and construction by each PPP Co was undertaken in accordance with the State Project Documents;
- (f) the construction by each PPP Co was undertaken in accordance with the AFC Design Documentation; and
- (g) all documentation was recorded and submitted to the Independent Verifier and the State in accordance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

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**Signed for and on behalf of**  
**BrisConnections Operations Pty Limited** ACN 128 615 547

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**Date**

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**Signed for and on behalf of**  
**BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

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**Date**

**Part 9  
Designer's Certificate -  
Progressive Design and Construction Certification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:**    **Parsons Brinckerhoff Pty Ltd** ABN 80 078 004 798 and **Arup Pty Ltd** ABN 18 000 966 165  
              (trading as the "**Parsons Brinckerhoff Arup Joint Venture**") ("**Designer**")

In accordance with the terms of clause 14.2(c)(ii) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that between the following dates [*insert dates of preceding 3 month period*] the construction by the PPP Cos was undertaken in accordance with the AFC Design Documentation.

Terms defined in the Deed have the same meaning in this certificate.

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**Signed by**  
**Parsons Brinckerhoff Arup Joint Venture**

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**Date**

**Part 10**

Not used.

**Part 11  
PPP Cos' Certificate -  
Rectification of Non-Compliance Certification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust**

In accordance with the terms of clause 14.2(h)(ii) of the Project Deed between the State and **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust** (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that:

- (a) each PPP Co has complied with the Remediation Plan given by the Independent Verifier to that PPP Co dated [*insert date of Plan*]; and
- (b) each PPP Co has rectified the non-compliance identified by the Independent Verifier in accordance with the requirements of the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of  
BrisConnections Operations Pty Limited** ACN 128 615 547

\_\_\_\_\_  
**Date**

**Signed for and on behalf of  
BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

\_\_\_\_\_  
**Date**

**Part 12**  
**Independent Verifier's Certificate -**  
**Progressive Design and Construction Verification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of clause 14.2 of the Project Deed between the State and each PPP Co dated *[insert date]* ("**Deed**") with respect to the Projects, we hereby certify that between the following dates *[insert dates of preceding 3 months]*:

- (a) the PPP Cos' quality system implemented under clause 7.1 of the Deed is in accordance with the requirements of AS/NZS ISO Standards;
- (b) the D&C Contractor's quality system which forms a part of the PPP Cos' quality system is in accordance with the requirements of AS/NZS ISO Standards;
- (c) each PPP Co has complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (d) the release of hold points and the witnessing of witness points (as referred to in the PPP Cos' Quality Management Plan) has been undertaken in accordance with the relevant procedures in the PPP Cos' Quality Management Plan;
- (e) the design and construction by each PPP Co has been undertaken in accordance with the State Project Documents, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification;
- (f) the unfixed goods, materials, plant and equipment that have been supplied are in accordance with the State Project Documents;
- (g) all documentation has been recorded and submitted to the State in accordance with the State Project Documents; and
- (h) each PPP Co has adequately addressed all issues raised and matters required by the State.

Terms defined in the Deed have the same meaning in this certificate.

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**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

---

**Date**

**Part 13**  
**Quality Manager's Certificate - Completion**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**") (if applicable)  
**From:**     **Charles Doyle of John Holland Pty Ltd** ABN 11 004 282 268 ("**Quality Manager**")

In accordance with the terms of clause 7.1(c) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that:

- (a) each PPP Co has complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (b) the release of hold points and the witnessing of witness points (as referred to in the PPP Cos' Quality Management Plan) has been undertaken in accordance with the relevant procedures in the PPP Cos' Quality Management Plan;
- (c) the PPP Cos have completed construction in accordance with the AFC Design Documentation; and
- (d) all documentation has been recorded and submitted to the Independent Verifier and the State in accordance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

---

**Signed by Charles Doyle**

---

**Date**

**Part 14  
PPP Cos' Notice of Tollroad Completion**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("**D&C Contractor**") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("**Security Trustee**")  
**From:** A Director, Secretary of General Manager of BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee for the **BrisConnections Asset Trust**

In accordance with the terms of clause 16.3(a)(ii) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Project, I consider that Tollroad Completion took place on the date specified below and request that the Independent Verifier issue a Certificate of Tollroad Completion.

Date: .....

In accordance with clause 16.3(a)(iii)A of the Deed, I set out below a list of the work remaining to be performed to achieve Tolling System Completion:

[*insert detailed list of work*]

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
Signed for and on behalf of  
BrisConnections Operations Pty Limited ACN 128 615 547

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed for and on behalf of  
BrisConnections Nominee Company Pty Ltd ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

\_\_\_\_\_  
Date

**Part 15  
PPP Cos' Notice of Tolling System Completion**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State") and [insert name and ACN (or ABN) of Independent Verifier] ("Independent Verifier")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** A Director, Secretary of General Manager of BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust

In accordance with the terms of clause 16.3(a)(ii) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos") dated [insert date] ("Deed") with respect to the Project, I consider that Tolling System Completion took place on the Date specified below and request that the Independent Verifier issue a Certificate of Tolling System Completion.

Date: .....

In accordance with clause 16.3(a)(iii)B of the Deed, I set out below a list of the work remaining to be performed to achieve Close-Out:

[insert detailed list of work]

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of  
BrisConnections Operations Pty Limited ACN 128 615 547**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signed for and on behalf of  
BrisConnections Nominee Company Pty Ltd ACN 128 615 814  
as trustee of the BrisConnections Asset Trust**

\_\_\_\_\_  
**Date**

**Part 16**  
**Independent Verifier's Certificate of Tollroad Completion**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State") and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("Independent Verifier")

In accordance with the terms of clause 16.3(c)(i)A of the Project Deed between the State and each PPP Co dated [insert date] ("Deed") with respect to the Project, I certify that Tollroad Completion took place on the Date of Tollroad Completion specified below.

Date of Tollroad Completion: .....

In accordance with clause 16.3(c)(i)A.3) of the Deed, I set out below a list of minor Defects of the kind referred to in the definition of Tollroad Completion.

[insert detailed list of minor Defects]

In accordance with clause 16.3(c)(i)B of the Deed, I set out below a list of the work remaining to be performed to achieve Tolling System Completion:

[insert detailed list of work]

This certificate does not relieve a PPP Co of its obligation to execute the AL D&C Activities in accordance with the Deed. I draw the attention of the parties to clause 16.4 of the Deed.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

\_\_\_\_\_  
**Date**

**Part 17**  
**Independent Verifier's Certificate of Tolling System Completion**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State") and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("Independent Verifier")

In accordance with the terms of clause 16.3(c)(i)A of the Project Deed between the State and each PPP Co dated [insert date] ("Deed") with respect to the Project, I certify that Tolling System Completion took place on the Date of Tolling System Completion specified below.

Date of Tolling System Completion: .....

In accordance with clause 16.3(c)(i)A.3) of the Deed, I set out below a list of minor Defects of the kind referred to in the definition of Tolling System Completion.

[insert detailed list of minor Defects]

In accordance with clause 16.3(c)(i)B of the Deed, I set out below a list of the work remaining to be performed to achieve Close-Out:

[insert detailed list of work]

This certificate does not relieve a PPP Co of its obligation to execute the AL D&C Activities in accordance with the Deed. I draw the attention of the parties to clause 16.4 of the Deed.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

\_\_\_\_\_  
**Date**

**Part 18  
PPP Cos' Notice of Close -Out**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("**D&C Contractor**") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("**Security Trustee**")  
**From:** A Director, Secretary or General Manager of **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust**

In accordance with the terms of clause 17.1(b) of the Project Deed between the State and **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust** (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects, I consider that Close-Out has been achieved and request that the Independent Verifier issue a Certificate of Close-out:

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
**BrisConnections Operations Pty Limited** ACN 128 615 547

\_\_\_\_\_  
**Date**

**Signed for and on behalf of**  
**BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

\_\_\_\_\_  
**Date**

**Part 19**  
**Independent Verifier's Certificate of Close-Out**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("Independent Verifier")

In accordance with the terms of clause 17.1(c)(i) of the Project Deed between the State and each PPP Co dated *[insert date]* ("Deed") with respect to the Projects, I certify that Close-Out took place on the Date of Close-Out specified below.

Date of Close-Out: .....

This certificate does not relieve a PPP Co of its obligation to execute the AL D&C Activities in accordance with the Deed. I draw the attention of the parties to clause 17.2 of the Deed, the NB Returned Works and the EWAG Returned Works.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

\_\_\_\_\_  
**Date**





**Part 22**  
**Notice by Independent Verifier**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("**Independent Verifier**")

In accordance with the terms of clause 14.5(b)(iii) of the Project Deed between the State and each PPP Co dated [insert date] ("**Deed**") with respect to the Projects, I certify that the Project Works described generally below being carried out by the relevant PPP Co in respect of the following Returned Facility have been completed in accordance with the State Project Documents.

Project Works: .....

Returned Facility: .....

This Certificate does not relieve either PPP Co of any obligations under the State Project Documents.

Terms defined in the Deed have the same meaning in this notice.

\_\_\_\_\_  
**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

\_\_\_\_\_  
**Date**

**Part 23**  
**Quality Manager's Certificate - Progressive O&M Certification**

**Airport Link ("Project")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**") (if applicable)  
**From:**     **Charles Doyle of John Holland Pty Ltd** ABN 11 004 282 268 ("**Quality Manager**")

In accordance with the terms of clause 7.1(c) of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Project, I hereby certify that between the following dates [*insert dates of preceding 6 month period*]:

- (a)        the PPP Cos' quality system under clause 7.1 of the Deed was in accordance with the requirements of AS/NZS ISO Standards;
- (b)        the O&M Contractors' quality systems which form a part of the PPP Cos' quality system were in accordance with the requirements of AS/NZS ISO Standards;
- (c)        each PPP Co complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (d)        the operation, inspection, repairs, maintenance and monitoring by the relevant PPP Co was undertaken in accordance with the State Project Documents including (without limitation) the durability and design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (e)        all documentation was recorded and submitted to the State in accordance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

---

**Signed by Charles Doyle**

---

**Date**

**Part 24**  
**Independent Verifier's Certificate - Progressive O&M Verification**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of clause 7.2 of the Project Deed between the State and each PPP Co dated *[insert date]* ("**Deed**") with respect to the Project, we hereby certify that between the following dates *[insert dates of preceding 3 month period]*:

- (a) the PPP Cos' quality system under clause 7.1 of the Deed was in accordance with the requirements of AS/NZS ISO Standards;
- (b) the O&M Contractor's quality systems which form a part of the PPP Cos' quality system were in accordance with the requirements of AS/NZS ISO Standards;
- (c) each PPP Co has complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (d) the operation, inspection, repairs, maintenance and monitoring by the relevant PPP Co has been undertaken in accordance with the State Project Documents, including (without limitation) the durability and design life requirements of section 3 of Annexure 1 to the Performance Specification;
- (e) all documentation has been recorded and submitted to the State in accordance with the State Project Documents; and
- (f) each PPP Co has adequately addressed all issues raised and matters required by the State.

Terms defined in the Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

---

**Date**

**Part 25  
Independent Verifier's Certificate -  
Last DLP**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of clause 7.2 of the Project Deed between the State and each PPP Co dated *[insert date]* ("**Deed**") with respect to the Projects, we hereby certify that as at the Last DLP:

- (a) the release of all hold points and the witnessing of the witness points (as referred to in the PPP Cos' Quality Management Plan) has been undertaken in accordance with the relevant procedures in the PPP Cos' Quality Management Plan;
- (b) all design, construction, inspection, repairs, maintenance and monitoring by the relevant PPP Co has been undertaken in accordance with the State Project Documents, including (without limitation) the durability and the design life requirements of section 3 of Annexure 1 to the Performance Specification; and
- (c) all documentation has been recorded and submitted to the State in accordance with the State Project Documents.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

\_\_\_\_\_  
**Date**

**Part 26  
PPP Cos' Certificate - End of the Concession Period**

**Airport Link ("Project")**

**To: The State of Queensland ("the State")**  
**From: A Director, Secretary or General Manager of APL Co Pty Limited ACN 609 262 615 and TQ APL Asset Co Pty Ltd ACN 609 390 454 as trustee of the TQ APL Asset Trust**

In accordance with the terms of clause 7.1(c) of the Project Deed between the State and APL Co Pty Limited ACN 609 262 615 and TQ APL Asset Co Pty Ltd ACN 609 390 454 as trustee of the TQ APL Asset Trust (each a "PPP Co" and together the "PPP Cos") dated [insert dates] ("Deed") with respect to the Project, I hereby certify that the performance of the Tollroad and the Maintained Non-Tollroad Works are, as at the end of the Term as defined in the Deed, in accordance with the requirements of the Deed, including (without limitation) the durability requirements of section 3 of Annexure 1 to the Performance Specification and that:

- (a) TQ Operations has undertaken and completed the O&M Activities in accordance with the requirements of the State Project Documents;
- (b) each PPP Co has complied with and satisfied the requirements of Annexure 10 to the Performance Specification and the requirements of the Quality Management Plan;
- (c) there are no Defects in, or repair works required to any part of the Tollroad or the Maintained Non-Tollroad Works;
- (d) the residual design life of the asset items comprising the Tollroad and the Maintained Non-Tollroad Works is at least equal to the required residual design life specified in the Performance Specification;
- (e) all documentation, reports, submissions, notices, approvals and the like have been submitted to the State in accordance with the State Project Documents; and
- (f) each PPP Co has adequately addressed all issues raised and matters required by the State.

Terms defined in the Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**  
**APL Co Pty Limited ACN 609 262 615**

---

**Date**

**Signed for and on behalf of**  
**TQ APL Asset Co Pty Limited ACN 609 390 454**  
as trustee of the **TQ APL Asset Trust**

---

**Date**

**Part 27**  
**NB Works Contractor's Notice of NB Practical Completion**

**Northern Busway** (Windsor to Kedron) ("**NB Project**")

**To:**       **The State of Queensland** ("**the State**") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:**     **Thiess Pty Ltd** ABN 87 010 221 486 and **John Holland Pty Ltd** ABN 11 004 282 268 ("**D&C Contractor**") and **ANZ Fiduciary Services Pty Limited** ABN 91 100 709 493 ("**Security Trustee**")  
**From:**     **A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited** ACN 128 616 464

In accordance with the terms of clauses 9.2(a)(i) and 9.2(a)(ii) of the NB Works Deed between the State and Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I consider that NB Practical Completion took place on the Date specified below and request that the Independent Verifier issue a Certificate of NB Practical Completion.

Date: .....

In accordance with clause 9.2(a)(iii) of the NB Works Deed, I set out below a list of the work remaining to be performed to achieve NB Final Completion:

[*insert detailed list of work*]

I set out below a list of the work remaining to be performed to achieve Close-Out:

[*insert detailed list of work*]

Terms defined in the Project Deed and the NB Works Deed have the same meaning in this notice.

\_\_\_\_\_  
**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited** ACN 128 616 464

\_\_\_\_\_  
**Date**

**Part 27A  
NB Works Contractor's Notice of EWAG Practical Completion**

**EWAG ("EWAG Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("**D&C Contractor**") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("**Security Trustee**")  
**From:** A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited ACN 128 616 464

In accordance with the terms of clauses 14.3(a)(i) and 14.3(a)(ii) of the EWAG Works Deed between the State and Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**EWAG Works Deed**") with respect to the EWAG Project, I consider that EWAG Practical Completion took place on the Date specified below and request that the Independent Verifier issue a Certificate of EWAG Practical Completion.

Date: .....

In accordance with clause 14.3(a)(iii) of the EWAG Works Deed, I set out below a list of the work remaining to be performed to achieve EWAG Final Completion:

[*insert detailed list of work*]

I set out below a list of the work remaining to be performed to achieve Close-Out:

[*insert detailed list of work*]

Terms defined in the Project Deed and the EWAG Works Deed have the same meaning in this notice.

\_\_\_\_\_  
**Signed for and on behalf of  
Northern Busway Contracting Pty Limited ACN 128 616 464**

\_\_\_\_\_  
**Date**

**Part 28**  
**Independent Verifier's Certificate of NB Practical Completion**

**Northern Busway** (Windsor to Kedron) ("**NB Project**")

**To:**       **The State of Queensland ("the State") and Northern Busway Contracting Pty Limited**  
              ACN 128 616 464 ("**NB Works Contractor**")

**Copy:**     **Thiess Pty Ltd** ABN 87 010 221 486 and **John Holland Pty Ltd** ABN 11 004 282 268  
              ("**D&C Contractor**") and **ANZ Fiduciary Services Pty Limited** ABN 91 100 709 493  
              ("**Security Trustee**")

**From:**     [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of clauses 9.2(c)(i)A.1) and 9.2(c)(i)A.2) of the NB Works Deed between the State and the NB Works Contractor dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I certify that NB Practical Completion took place on the Date of NB Practical Completion specified below.

Date of NB Practical Completion: .....

In accordance with clause 9.2(c)(i)A.3) of the NB Works Deed, I set out below a list of minor Defects of the kind referred to in the definition of NB Practical Completion.

[*insert detailed list of minor Defects*]

In accordance with clause 9.2(c)(i)B. of the NB Works Deed, I set out below a list of the work remaining for the Busway to be performed to achieve NB Final Completion:

[*insert detailed list or work*]

I set out below a list of the work remaining to be performed to achieve Close-Out:

[*insert detailed list of work*]

This certificate does not relieve a PPP Co or the NB Works Contractor of its obligation to execute the D&C Activities in accordance with the State Project Documents. I draw the attention of the parties to clause 9.3 of the NB Works Deed.

Terms defined in the Project Deed and the NB Works Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

\_\_\_\_\_  
**Date**

**Part 28A  
Independent Verifier's Certificate of EWAG Practical Completion**

**EWAG ("EWAG Project")**

**To:** The State of Queensland ("the State") and Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of clauses 14.3(c)(i)A.1) and 14.3(c)(i)A.2) of the EWAG Works Deed between the State and the NB Works Contractor dated *[insert date]* ("**EWAG Works Deed**") with respect to the EWAG Project, I certify that EWAG Practical Completion took place on the Date of EWAG Practical Completion specified below.

Date of EWAG Practical Completion: .....

In accordance with clause 14.3(c)(i)A.3) of the EWAG Works Deed, I set out below a list of minor Defects of the kind referred to in the definition of EWAG Practical Completion.

*[insert detailed list of minor Defects]*

In accordance with clause 14.3(c)(i)B. of the EWAG Works Deed, I set out below a list of the work remaining for EWAG to be performed to achieve EWAG Final Completion:

*[insert detailed list or work]*

I set out below a list of the work remaining to be performed to achieve Close-Out:

*[insert detailed list of work]*

This certificate does not relieve a PPP Co or the NB Works Contractor of its obligation to execute the D&C Activities in accordance with the State Project Documents. I draw the attention of the parties to clause 14.4 of the EWAG Works Deed.

Terms defined in the Project Deed and the EWAG Works Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

\_\_\_\_\_  
**Date**

**Part 29**  
**NB Works Contractor's Notice of NB Final Completion**

**Northern Busway (Windsor to Kedron) ("NB Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("**D&C Contractor**") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("**Security Trustee**")  
**From:** A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited ACN 128 616 464

In accordance with the terms of clause 10.1(b) of the NB Works Deed between the State and Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I consider that NB Final Completion took place on the Date specified below and request that the Independent Verifier issue a Certificate of NB Final Completion.

Terms defined in the NB Works Deed have the same meaning in this notice.

---

**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited ACN 128 616 464**

---

**Date**

**Part 29A**  
**NB Works Contractor's Notice of EWAG Final Completion**

**EWAG ("EWAG Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**Copy:** Thies Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("**D&C Contractor**") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("**Security Trustee**")  
**From:** A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited ACN 128 616 464

In accordance with the terms of clause 15.1(b) of the EWAG Works Deed between the State and Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**EWAG Works Deed**") with respect to the EWAG Project, I consider that EWAG Final Completion took place on the Date specified below and request that the Independent Verifier issue a Certificate of EWAG Final Completion.

Terms defined in the EWAG Works Deed have the same meaning in this notice.

---

**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited ACN 128 616 464**

---

**Date**

**Part 30**  
**Independent Verifier's Certificate of NB Final Completion**

**Northern Busway** (Windsor to Kedron) ("**NB Project**")

**To:**        **The State of Queensland ("the State") and Northern Busway Contracting Pty Limited**  
                 ACN 128 616 464 ("**NB Works Contractor**")

**Copy:**     **Thiess Pty Ltd** ABN 87 010 221 486 and **John Holland Pty Ltd** ABN 11 004 282 268  
                 ("**D&C Contractor**") and **ANZ Fiduciary Services Pty Limited** ABN 91 100 709 493  
                 ("**Security Trustee**")

**From:**     [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of clause 10.1(c)(i) of the NB Works Deed between the State and the NB Works Contractor dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I certify that NB Final Completion took place on the Date of NB Final Completion specified below.

Date of NB Final Completion: .....

This certificate does not relieve either of the PPP Cos or the NB Works Contractor of its obligation to execute the D&C Activities in accordance with the State Project Documents. I draw the attention of the parties to clause 10.2 of the NB Works Deed.

Terms defined in the NB Works Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

\_\_\_\_\_  
**Date**

**Part 30A  
Independent Verifier's Certificate of EWAG Final Completion**

**EWAG ("EWAG Project")**

**To:** The State of Queensland ("the State") and Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")  
**Copy:** Thiess Pty Ltd ABN 87 010 221 486 and John Holland Pty Ltd ABN 11 004 282 268 ("D&C Contractor") and ANZ Fiduciary Services Pty Limited ABN 91 100 709 493 ("Security Trustee")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("**Independent Verifier**")

In accordance with the terms of clause 15.1(c)(i) of the EWAG Works Deed between the State and the NB Works Contractor dated [insert date] ("**EWAG Works Deed**") with respect to the EWAG Project, I certify that EWAG Final Completion took place on the Date of EWAG Final Completion specified below.

Date of EWAG Final Completion: .....

This certificate does not relieve either of the PPP Cos or the NB Works Contractor of its obligation to execute the D&C Activities in accordance with the State Project Documents. I draw the attention of the parties to clause 15.2 of the EWAG Works Deed.

Terms defined in the EWAG Works Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

\_\_\_\_\_  
**Date**

**Part 31  
NB Payment Claim**

**Northern Busway (Windsor to Kedron) ("NB Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited  
 ACN 128 616 464

In accordance with the terms of clause 14.2 of the NB Works Deed between the State and **Northern Busway Contracting Pty Limited** ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I hereby submit this payment claim as follows:

<b>Date of payment claim</b>	<b>Payment period</b>	<b>Particulars of NB Works in respect of which payment is claimed</b>	<b>Documents or other information provided in respect of amount claimed</b>	<b>Amount claimed</b>
[ <i>Insert date of payment claim</i> ]	[ <i>Insert period in respect of which payment is claimed</i> ]	[ <i>Insert detailed list of work completed for which payment is claimed</i> ]	[ <i>Insert amounts claimed in respect of each item of NB Works</i> ]	[ <i>Insert details of any supporting documentation or other information provided to verify amounts claimed</i> ]
			<b>Total Amount claimed</b>	

All supporting documentation and information referred to in clauses 14.2(a)(i) and 14.2(a)(ii) of the NB Works Deed is contained in the Schedule to this payment claim.

A statutory declaration from each PPP Co and the NB Works Contractor conforming with the requirements of clause 14.2(b) of the NB Works Deed is contained in the Schedule to this payment claim.

A statement in writing signed by each PPP Co, the NB Works Contractor and the D&C Contractor conforming with the requirements of clause 14.2(c) of the NB Works Deed is contained in the Schedule to this payment claim.

A certificate signed by each PPP Co and the NB Works Contractor conforming with the requirements of clause 14.2(d) of the NB Works Deed is contained in the Schedule to this payment claim.

Terms defined in the Project Deed and the NB Works Deed have the same meaning in this claim.

This is not a tax invoice.

\_\_\_\_\_  
**Signed for and on behalf of  
 Northern Busway Contracting Pty Limited** ACN 128 616 464

Schedule

**Part 31A  
EWAG Payment Claim**

**EWAG ("EWAG Project")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited ACN 128 616 464

In accordance with the terms of clause 19.2 of the EWAG Works Deed between the State and Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**EWAG Works Deed**") with respect to the EWAG Project, I hereby submit this payment claim as follows:

<b>Date of payment claim</b>	<b>Payment period</b>	<b>Particulars of EWAG Works in respect of which payment is claimed</b>	<b>Documents or other information provided in respect of amount claimed</b>	<b>Amount claimed</b>
[ <i>Insert date of payment claim</i> ]	[ <i>Insert period in respect of which payment is claimed</i> ]	[ <i>Insert detailed list of work completed for which payment is claimed</i> ]	[ <i>Insert amounts claimed in respect of each item of EWAG Works</i> ]	[ <i>Insert details of any supporting documentation or other information provided to verify amounts claimed</i> ]
			<b>Total Amount claimed</b>	

All supporting documentation and information referred to in clauses 19.2(c)(i) of the EWAG Works Deed is contained in the Schedule to this payment claim.

A statutory declaration from the NB Works Contractor conforming with the requirements of clause 19.2(c)(ii) of the EWAG Works Deed is contained in the Schedule to this payment claim.

A statement in writing signed by the NB Works Contractor and the D&C Contractor conforming with the requirements of clause 19.2(c)(iii) of the EWAG Works Deed is contained in the Schedule to this payment claim.

A certificate signed by the NB Works Contractor conforming with the requirements of clause 19.2(c)(iv) of the EWAG Works Deed is contained in the Schedule to this payment claim.

Terms defined in the Project Deed and the EWAG Works Deed have the same meaning in this claim.

This is not a tax invoice.

\_\_\_\_\_  
**Signed for and on behalf of  
 Northern Busway Contracting Pty Limited ACN 128 616 464**

**Schedule**

**Part 32**  
**NB Certificate of Value**

**Northern Busway** (Windsor to Kedron) ("**NB Project**")

**To:**        **The State of Queensland** ("**the State**") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:**     **A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited**  
                 ACN 128 616 464

In accordance with the terms of clause 14.2(c)(iv) of the NB Works Deed between the State and **Northern Busway Contracting Pty Limited** ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**NB Works Deed**") with respect to the NB Project, I hereby certify that, in respect of the Payment Claim to which this certificate is attached:

- (a)        all of the works described in the Payment Claim have been carried out in accordance with the State Project Documents, other than as listed below:  
  
                 [*insert details as relevant*];
- (b)        all NB Project Activities carried out to date have been carried out in accordance with the State Project Documents and all applicable regulatory requirements; and
- (c)        all unfixed goods, materials, plant and equipment described in the Payment Claim are in accordance with the State Project Documents.

As required by the Independent Verifier, the following technical/engineering certificates and/or reports are annexed to this certificate for the purpose of verifying the information in this certificate:

[*insert details as applicable*]

Terms defined in the Project Deed and the NB Works Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited** ACN 128 616 464

**Part 32A  
EWAG Certificate of Value**

**EWAG ("EWAG Project")**

**To:**        **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:**     **A Director, Secretary or General Manager of Northern Busway Contracting Pty Limited**  
                 ACN 128 616 464

In accordance with the terms of clause 19.2(c)(iv) of the EWAG Works Deed between the State and **Northern Busway Contracting Pty Limited** ACN 128 616 464 ("**NB Works Contractor**") dated [*insert date*] ("**EWAG Works Deed**") with respect to the EWAG Project, I hereby certify that, in respect of the Payment Claim to which this certificate is attached:

- (a)        all of the works described in the Payment Claim have been carried out in accordance with the State Project Documents, other than as listed below:  
  
                 [*insert details as relevant*];
- (b)        all EWAG Project Activities carried out to date have been carried out in accordance with the State Project Documents and all applicable regulatory requirements; and
- (c)        all unfixed goods, materials, plant and equipment described in the Payment Claim are in accordance with the State Project Documents.

As required by the Independent Verifier, the following technical/engineering certificates and/or reports are annexed to this certificate for the purpose of verifying the information in this certificate:

[*insert details as applicable*]

Terms defined in the Project Deed and the EWAG Works Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited** ACN 128 616 464

**Part 33**  
**NB Payment Statement**

**Northern Busway (Windsor to Kedron) ("NB Project")**

**To:** Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")  
**Copy:** The State of Queensland ("the State")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("Independent Verifier")

In accordance with the terms of clause 14.3 of the NB Works Deed between the State and the NB Works Contractor dated [insert date] ("NB Works Deed") with respect to the NB Project, I hereby certify that:

- (a) this payment statement relates to the following payment claim:  
[insert details of payment claim to which Payment Statement relates];
- (b) the State has previously paid the NB Works Contractor [insert amount] under the NB Works Deed;
- (c) in respect of the payment claim described in paragraph (a), the Scheduled Amount is [insert amount];
- (d) [delete if not applicable] the Schedule Amount is less than the amount claimed in the payment claim described in paragraph (a) due to [insert reason in accordance with clauses 14.3(f)(i)-(ii) of the NB Works Deed].

Terms defined in the Project Deed and the NB Works Deed have the same meaning in this statement.

\_\_\_\_\_  
**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

\_\_\_\_\_  
**Date**

**IMPORTANT NOTE:**

Any evaluation or issue of a payment statement by the Independent Verifier will not:

- (a) constitute approval of any work nor will it be taken as admission or evidence that the part of the NB Works covered by the payment statement has been satisfactorily carried out in accordance with the Project Deed or the NB Works Deed; or
- (b) constitute a waiver of the requirements of clause 14.2 of the NB Works Deed in relation to any payment claim other than to the extent (if any) to which the State expressly waives such requirements in respect of the payment claim the subject of the payment statement.

**Part 33A  
EWAG Payment Statement**

**EWAG ("EWAG Project")**

**To:** Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")  
**Copy:** The State of Queensland ("the State")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("Independent Verifier")

In accordance with the terms of clause 19.3 of the EWAG Works Deed between the State and the NB Works Contractor dated [insert date] ("EWAG Works Deed") with respect to the EWAG Project, I hereby certify that:

- (a) this payment statement relates to the following payment claim:  
[insert details of payment claim to which Payment Statement relates];
- (b) the State has previously paid the NB Works Contractor [insert amount] under the EWAG Works Deed;
- (c) in respect of the payment claim described in paragraph (a), the Scheduled Amount is [insert amount];
- (d) [delete if not applicable] the Schedule Amount is less than the amount claimed in the payment claim described in paragraph (a) due to [insert reason in accordance with clauses 19.3(f)(i)-(ii) of the EWAG Works Deed].

Terms defined in the Project Deed and the EWAG Works Deed have the same meaning in this statement.

---

**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

---

**Date**

**IMPORTANT NOTE:**

Any evaluation or issue of a payment statement by the Independent Verifier will not:

- (a) constitute approval of any work nor will it be taken as admission or evidence that the part of the EWAG Works covered by the payment statement has been satisfactorily carried out in accordance with the Project Deed or the EWAG Works Deed; or
- (b) constitute a waiver of the requirements of clause 19.2 of the EWAG Works Deed in relation to any payment claim other than to the extent (if any) to which the State expressly waives such requirements in respect of the payment claim the subject of the payment statement.

**Part 34**  
**PPP Cos' Certificate - As-Built Documentation**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State") and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")  
**From:** A Director, Secretary or General Manager of **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust**

In accordance with the terms of the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") with respect to the Projects generally and the Documentation Schedule specifically, I hereby certify that the attached As-Built Documentation complies with all the requirements of the State Project Documents including the Performance Specification.

Terms defined in the Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**  
**BrisConnections Operations Pty Limited** ACN 128 615 547

---

**Date**

**Signed for and on behalf of**  
**BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

---

**Date**

**Part 35**  
**Independent Verifier's Certificate - As-Built Documentation**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** *[insert name and ACN (or ABN) of Independent Verifier]* ("**Independent Verifier**")

In accordance with the terms of the Project Deed between the State and each PPP Co dated *[insert date]* ("**Deed**") with respect to the Projects generally and the Documentation Schedule specifically, we hereby certify that the attached As-Built Documentation complies with all the requirements of the State Project Documents including the Performance Specification.

Terms defined in the Deed have the same meaning in this certificate.

\_\_\_\_\_  
**Signed for and on behalf of**  
*[insert name and ACN (or ABN) of Independent Verifier]*

\_\_\_\_\_  
**Date**

**Part 36**  
**Proof Engineering & Construction Verifier's Certificate - Design Verification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** Hans Huijben

In accordance with the terms of section 3.5.1(c)(ii) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that:

- (a) I am a qualified fire safety engineer with experience in the practice of fire safety engineering and tunnel fire engineering;
- (b) the PPP Cos' attached Design Documentation:
  - (i) complies with all applicable codes and standards in respect of fire and life safety; and
  - (ii) is based on:
    - A. *design objectives;*
    - B. *appropriate assumptions, engineering methods and analyses; and*
    - C. *calculations and input data which support the design,*which are in accordance with QFRS's Community Safety Guideline "Third Party / Peer Review of the Fire and Life Safety Design of Major Infrastructure Projects (Issue 1, December 2006)"; and
- (c) attached to this certificate is my report on the Design Documentation in accordance with the requirements of section 3.5.1 of Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed by Hans Huijben**

\_\_\_\_\_  
**Date**

**Part 37**  
**Qualified Fire Engineer's Certificate - Fire Engineering Brief and Fire Engineering Reports**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** John Munroe of Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798 ("Qualified Fire Engineer")

In accordance with the terms of section 3.5.2(i)(iii) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that:

- (a) I am an experienced fire engineer, qualified and accredited in accordance with a fire safety engineering accreditation scheme approved by the stakeholders and Authorities listed in section 3.5.2(b) of Annexure 1 (Part 1) to the Performance Specification; and
- (b) the attached Fire Engineering Brief and/or fire engineering reports [*as applicable*] for the Project Works required under Annexure 1(Part 1) to the Performance Specification comply with the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed by John Munroe**

---

**Date**

**Part 38**  
**Qualified Fire Engineer's Certificate - Fire and Life Safety Design**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** John Munroe of Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798 ("Qualified Fire Engineer")

In accordance with the terms of section 3.5.2(i)(iv) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") with respect to the Projects, I hereby certify that:

- (a) I am an experienced fire engineer, qualified and accredited in accordance with a fire safety engineering accreditation scheme approved by the stakeholders and Authorities listed in section 3.5.2(b) of Annexure 1 (Part 1) to the Performance Specification; and
- (b) in respect of fire and life safety elements (including the elements listed in section 3.5.2(g) of Annexure 1 (Part 1) to the Performance Specification) of the attached Design Documentation complies with and is consistent with the Fire Engineering Brief and all fire engineering reports (including the Fire Resistance and Fire Rating Report and Egress Design Report) required under Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed by John Munroe**

---

**Date**

**Part 39**  
**Qualified Fire Engineer's Certificate - Fire and Life Safety Construction (AL Works)**

**Airport Link ("Project ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** John Munroe of Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798 ("Qualified Fire Engineer")

In accordance with the terms of section 3.5.2(i)(v) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the Project, I hereby certify that:

- (a) I am an experienced fire engineer, qualified and accredited in accordance with a fire safety engineering accreditation scheme approved by the stakeholders and Authorities listed in section 3.5.2(b) of Annexure 1 (Part 1) to the Performance Specification; and
- (b) the as-built AL Works, testing and commissioning plans, testing and commissioning, and operations and maintenance plans prepared by the PPP Cos in accordance with the State Project Documents comply with and are consistent with the Fire Engineering Brief and all fire engineering reports (including the Fire Resistance and Fire Rating Report and Egress Design Report) required under Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

---

**Signed by John Munroe**

---

**Date**

**Part 40  
Qualified Fire Engineer's Certificate – Fire and Life Safety Construction (NB Works)**

**Northern Busway (Windsor to Kedron) ("NB Project ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** John Munroe of Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798 ("Qualified Fire Engineer")

In accordance with the terms of section 3.5.2(i)(v) of Annexure 1 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the NB Project, I hereby certify that:

- (a) I am an experienced fire engineer qualified and accredited in accordance with a fire safety engineering accreditation scheme approved by the stakeholders and Authorities listed in section 3.5.2(b) of Annexure 1 (Part 1) to the Performance Specification; and
- (b) the as-built NB Works, testing and commissioning plans, testing and commissioning, and operations and maintenance plans prepared by the PPP Cos in accordance with the State Project Documents comply with and are consistent with the Fire Engineering Brief and all fire engineering reports (including the Fire Resistance and Fire Rating Report and Egress Design Report) required under Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed by John Munroe**

---

**Date**

**Part 41**  
**Equitable Access Consultant's Certificate - Equitable Access Design**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects ")**

**To:** The State of Queensland ("the State")  
**Copy:** BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "PPP Co" and together the "PPP Cos")  
**From:** Michael Fox of Access Australia Consultants Pty Limited ABN 79 062 507 868 ("Equitable Access Consultant")

In accordance with the terms of section 3.7(a)(ii) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") with respect to the Projects. I hereby certify that:

- (a) I am a qualified and experienced equitable access consultant; and
- (b) in respect of equitable access elements, the attached Design Documentation satisfies the requirements of the Equitable Access Design Requirements Statement prepared in accordance with section 3.7(a)(i) of Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed by Michael Fox**

---

**Date**

**Part 42**  
**Equitable Access Consultant's Certificate - Equitable Access Construction (AL Works)**

**Airport Link ("Project")**

**To:** The State of Queensland ("the State")  
**Copy:** **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust** (each a "PPP Co" and together the "PPP Cos")  
**From:** **Michael Fox of Access Australia Consultants Pty Limited** ABN 79 062 507 868 ("Equitable Access Consultant")

In accordance with the terms of section 3.7(b) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the Project. I hereby certify that:

- (a) I am a qualified and experienced equitable access consultant; and
- (b) the as-built AL Works satisfy the requirements of the Equitable Access Design Requirements Statement prepared in accordance with section 3.7(a)(i) of Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

---

**Signed by Michael Fox**

---

**Date**

**Part 43  
Equitable Access Consultant's Certificate - Equitable Access Construction (NB Works)**

**Northern Busway ("NB Project")**

**To: The State of Queensland ("the State")**  
**Copy: Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")**  
**From: Michael Fox of Access Australia Consultants Pty Limited ABN 79 062 507 868**  
**("Equitable Access Consultant")**

In accordance with the terms of section 3.7(c) of Annexure 1 (Part 1) to the Performance Specification contained in Exhibit A to the Project Deed between the State and BrisConnections Operations Pty Limited ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") dated [*insert date*] ("**Deed**") relating to the NB Project. I hereby certify that:

- (a) I am a qualified and experienced equitable access consultant; and
- (b) the as-built NB Works satisfy the requirements of the Equitable Access Design Requirements Statement prepared in accordance with section 3.7(a)(i) of Annexure 1 (Part 1) to the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed by Michael Fox**

---

**Date**

**Part 44**  
**PPP Cos' Certificate - As-built Document Certification (AL Works)**

**Airport Link ("Project ")**

**To:** The State of Queensland ("the State")  
**From:** **BrisConnections Operations Pty Limited** ACN 128 615 547 and **BrisConnections Nominee Company Pty Ltd** ACN 128 615 814 as trustee of the **BrisConnections Asset Trust** (each a "PPP Co" and together the "PPP Cos")

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the Project, I attach the following copies of the as-built drawings, models and other data for the AL Works:

- (a) 2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b) 4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and certify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
**BrisConnections Operations Pty Limited** ACN 128 615 547

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signed for and on behalf of**  
**BrisConnections Nominee Company Pty Ltd** ACN 128 615 814  
as trustee of the **BrisConnections Asset Trust**

\_\_\_\_\_  
**Date**

**Part 45**  
**NB Works Contractor's Certificate - As-built Document Certification (NB Works)**

**Northern Busway** (Windsor to Kedron) ("**NB Project** ")

**To:** The State of Queensland ("**the State**")  
**From:** Northern Busway Contracting Pty Limited ACN 128 616 464 ("**NB Works Contractor**")

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the NB Project, I attach the following copies of the as-built drawings, models and other data for the NB Works:

- (a) 2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b) 4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and certify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited** ACN 128 616 464

\_\_\_\_\_  
**Date**

**Part 45A  
NB Works Contractor's Certificate - As-built Document Certification (EWAG Works)**

**EWAG ("EWAG Project")**

**To: The State of Queensland ("the State")**  
**From: Northern Busway Contracting Pty Limited ACN 128 616 464 ("NB Works Contractor")**

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the EWAG Project, I attach the following copies of the as-built drawings, models and other data for the EWAG Works:

- (a) 2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b) 4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and certify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

---

**Signed for and on behalf of**  
**Northern Busway Contracting Pty Limited ACN 128 616 464**

---

**Date**

**Part 46**  
**Independent Verifier's Certificate – As-built Document Verification (AL Works)**

**Airport Link ("Project")**

**To:**       **The State of Queensland ("the State")**  
**From:**     [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the Project, I attach the following copies of the as-built drawings, models and other data for the AL Works:

- (a)       2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b)       4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and verify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

\_\_\_\_\_  
**Date**

**Part 47**  
**Independent Verifier's Certificate – As-built Document Verification (NB Works)**

**Northern Busway** (Windsor to Kedron) ("**NB Project** ")

**To:**       **The State of Queensland ("the State")**  
**From:**     [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the NB Project, I attach the following copies of the as-built drawings, models and other data for the NB Works:

- (a)       2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b)       4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and verify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

\_\_\_\_\_  
**Date**

**Part 47A**  
**Independent Verifier's Certificate – As-built Document Verification (EWAG Works)**

**EWAG ("EWAG Project")**

**To:**       **The State of Queensland ("the State")**  
**From:**     [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

In accordance with the terms of sections 7.2(a)(i)-(ii) of Annexure 2 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [*insert date*] ("**Deed**") relating to the EWAG Project, I attach the following copies of the as-built drawings, models and other data for the EWAG Works:

- (a)       2 colour [*delete if colour copy not appropriate*] copies of A1 size, certified by the PPP Cos, marked "as built" as required for micro-filming and record purposes; and
- (b)       4 colour [*delete if colour copy not appropriate*] copies of A3 size, certified by the PPP Cos, marked "as built",

and verify that the attached as-built documents comply with the requirements of the State Project Documents.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

\_\_\_\_\_  
**Signed for and on behalf of**  
[*insert name and ACN (or ABN) of Independent Verifier*]

\_\_\_\_\_  
**Date**

**Part 48**  
**Independent Verifier's Certificate- RSS certification**

**Airport Link, Northern Busway (Windsor to Kedron) and EWAG ("Projects")**

**To:** The State of Queensland ("the State")  
**From:** [insert name and ACN (or ABN) of Independent Verifier] ("**Independent Verifier**")

In accordance with the terms of section 6.7.21(g)(ii) of Annexure 1 (Part 1) of the Performance Specification contained in Exhibit A to the Project Deed between the State and the PPP Cos dated [insert date] ("**Deed**") relating to the Projects, I certify that that the RSS wall identified below has been constructed to the specified design including the use of materials that conform to the specified parameters set out in the Performance Specification.

Terms defined in the Deed (including the Performance Specification) have the same meaning in this certificate.

**Schedule**

**[Identify relevant RSS wall]**

---

**Signed for and on behalf of**  
[insert name and ACN (or ABN) of Independent Verifier]

---

**Date**



## **Part 50**

### **Notice by BAC - Final Payment Claim**

#### **EWAG ("EWAG Project")**

This Deed Poll is given in favour of the State of Queensland.

**To:**       **The State of Queensland ("the State")** and [*insert name and ACN (or ABN) of Independent Verifier*] ("**Independent Verifier**")

#### **Background**

- A.       BrisConnections Operations Pty Ltd ACN 128 615 547 and BrisConnections Nominee Company Pty Ltd ACN 128 615 814 as trustee of the BrisConnections Asset Trust (each a "**PPP Co**" and together the "**PPP Cos**") and the State have entered into the document titled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - Project Deed" on [*insert date*] ("**Project Deed**").
- B.       Northern Busway Contracting Pty Ltd ACN 128 616 464 ("**NB Works Contractor**") and the State have entered into the document titled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - EWAG Works Deed" on [*insert date*] ("**EWAG Works Deed**").
- C.       Pursuant to the EWAG Works Deed and the Project Deed, the NB Works Contractor has agreed to design, construct and commission EWAG in accordance with those documents.
- D.       Part of EWAG is constructed on BAC Land ("**BAC EWAG**").

#### **Operative Part**

- 1.       I/We confirm that design, construction and commissioning of BAC EWAG has been carried out and completed to my/our satisfaction in accordance with BAC's requirements.
- 2.       I/We release the State of Queensland from all claims and actions which I/we may have arising out of or in respect of or in connection with the works referred to in paragraph 1 above, except for any claims and actions which I/we may have pursuant to or in accordance with:
  - (a)       the document titled "Airport Link/Northern Busway (Windsor to Kedron) /EWAG Projects - BAC EWAG Works Facilitation Deed" between BAC and the State dated on or about the date of the Project Deed;
  - (b)       any sublease of BAC EWAG granted by BAC to the State; and
  - (c)       any other agreement BAC and the State are parties to in respect of or in connection with the EWAG Project.
- 3.       This Deed Poll does not relieve the PPP Cos of their obligation to correct Defects in BAC EWAG in accordance with the Project Deed or the State Project Documents.
- 4.       Terms defined in the Project Deed or the EWAG Works Deed have the same meaning in this Deed Poll unless the context requires otherwise.

Signed as a Deed Poll

**Signed sealed and delivered** by \_\_\_\_\_ in  
the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

## Schedule 6 (Toll Calculation Schedule)

(Clause 20)

---

### 1. Definitions

Definitions in clause 1.1 of the Project Deed apply to this Schedule 6 unless the relevant term is defined in this Schedule 6:

"**Account Requirement**" has the meaning given to that term in the RFA.

"**Base Toll**" has the meaning given to that term in the Tolling Declaration.

"**Charge Toll**" means, for a Tollable Section, the Toll that TQ Operations levies users of the Tollroad in accordance with the Tolling Declaration.

"**Exempt Vehicle**" has the meaning given to that term in the Tolling Declaration.

"**Franchisee**" has the meaning given to that term in the RFA.

"**GST Rate Change**" has the meaning set out in clause 6.2 of this Schedule 6.

"**Product Charge**" has the meaning given to that term in the RFA.

"**Taxable Supply**" has the meaning given to it in the GST law, excluding the reference to section 84-5 of the GST law.

"**Tax Invoice**" has the meaning given to it in the GST law.

"**Tollable Section**" has the meaning given to that term in the Tolling Declaration.

"**Trip**" means the driving of a type of vehicle referred to in the Tolling Declaration on the Tollroad.

"**Video Matching Fee**" has the meaning given to that term in the Tolling Declaration.

---

### 2. Tolls

2.1 Not used

2.2 Not used

2.3 Not used

#### 2.4 Tolling Declaration

TQ Operations may levy Tolls, User Administration Charges and Administration Charges in accordance with the Tolling Declaration.

#### 2.5 Changes to Charge Toll or charges

In respect of any change to a Charge Toll, Administration Charge or User Administration Charge, in addition to the notice obligations under the Tolling Declaration, TQ Operations must give the State notice of:

- (a) the new Charge Toll for each Tollable Section and category of vehicle; and/or

- (b) the new Administration Charge; and/or
- (c) the new User Administration Charge; and
- (d) the date on which TQ Operations intends that it first apply,

at least 20 Business Days and no more than 40 Business Days prior to the commencement of the relevant change.

---

### **3. Nominated Tolling Products and User Charges**

#### **3.1 Not used**

#### **3.2 User Charges**

- (a) Subject to clause 3.2(b) of this Schedule 6, TQ Operations is permitted to charge or impose User Charges on a Customer pursuant to a Customer Contract in respect of a Nominated Tolling Product in the same way and subject to the same restrictions as the Franchisees are permitted to charge or impose Product Charges and Account Requirements under Schedule 4 of the RFA as varied in accordance with the RFA.
- (b) The maximum Video Matching Fee that may be imposed upon TQ Operations' Customers for the purposes of each of the Nominated Tolling Products is \$0.93 (including GST) per Trip, as varied in accordance with the process in the Tolling Declaration for adjustment of the Video Matching Fee.

---

### **4. Exempt Vehicles**

Notwithstanding anything else in this deed, TQ Operations must not levy any Toll or User Charge for or in connection with the use of the Tollroad by any Exempt Vehicle.

---

### **5. Administration Charge**

If requested by the State, TQ Operations must promptly provide the State with such information and access to records (on an open book basis) as the State or its nominee may reasonably require to ensure that the Administration Charge and the User Administration Charge comply with the requirements under the Transport Infrastructure Act.

---

### **6. GST**

#### **6.1 Amounts GST inclusive**

All amounts set, calculated, determined or specified as payable under the Tolling Declaration include any GST that is payable in respect of that amount under GST law.

#### **6.2 Base Toll**

If, any time during the period between the date of this deed and the end of the Concession Period, the rate of applicable GST under GST law changes from the GST applicable at the date of this deed ("**GST Rate Change**"), the Base Toll for each category of vehicle which will apply for the purposes of the Tolling Declaration after the date on which the GST Rate Change becomes effective will be the Base Toll adjusted in accordance with the following formula:

$$\text{Base Toll} = Y \times (1 + X)$$

Where:

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change; and

Y = the Base Toll for the relevant Tollable Section and the relevant category of vehicle, net of any applicable GST.

**6.3 Not used**

**6.4 User Administration Charge and Administration Charge**

If, at any time during the period between the date of this deed and the end of the Concession Period there is a GST Rate Change, the User Administration Charge and Administration Charge in the Tolling Declaration will be adjusted in accordance with the following formula:

$$\text{Adjusted amount} = Y \times (1 + X)$$

Where:

X = the rate of GST (expressed as a decimal) under GST law applicable after the GST Rate Change; and

Y = the current User Administration Charge or Administration Charge calculated in accordance with the formula in the Tolling Declaration, net of any applicable GST.

**6.5 GST Rate Change**

Notwithstanding any other provision of this Schedule 6 the GST Rate Change in respect of any Toll or User Charge will not take into account any change to the rate of applicable GST if the change to the rate of GST does not apply to the relevant Toll or User Charge.

**6.6 Statements must qualify as a Tax Invoice**

TQ Operations must ensure that any statement which is required to be generated in respect of a Nominated Tolling Product qualifies as a Tax Invoice in respect of any amount listed on that statement which is consideration for a Taxable Supply.

## **Schedule 7 (Principal Traffic Connections)**

### **(Clause 26.1(a))**

The Principal Traffic Connections are the connections between the Tollroad and each of the following roads:

- (a) East-West Arterial;
- (b) Gympie Road;
- (c) Stafford Road;
- (d) Inner City Bypass;
- (e) Sandgate Road;
- (f) Lutwyche Road;
- (g) Campbell Street; and
- (h) Bowen Bridge Road.

**Schedule 8 (Additional rent proportions)**

**(Clause 23.1)**

Increase in revenue over Base Case Financial Model (%)	Proportion of excess revenue payable to the State		
	Relevant Period* Nos 1 to 3	Relevant Period* Nos 4 to 13	Relevant Period* No 14 and later Relevant Periods*
0-10	0	0	0
10.01-20	0	0	10
20.01-30	0	10	20
30.01-40	0	20	30
40.01-50	0	30	40
50.01+	0	40	50

\* As defined in clause 23.1(d) of this deed.

## **Schedule 9 (Confidential Information)**

Not applicable.

**Schedule 10 (Expert Determination Agreement)**

**(Clause 44.4(f))**

## Expert Determination Agreement

The State of Queensland

The State

*[Insert name of Expert]*

Expert

APL Co Pty Limited and TQ APL Asset Co Pty Limited as trustee of the TQ

APL Asset Trust

PPP Cos

## Expert Determination Agreement made at

on

### Parties

The State of Queensland ("the State")

**APL Co Pty Limited** ACN 609 262 615 and **TQ APL Asset Co Pty Limited** ACN 609 390 454 as trustee of the **TQ APL Asset Trust** (each a "PPP Co" and together the "PPP Cos")

***[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 44.4 of the Project Deed]*** ("Expert")

### Recitals

- A. The State and each PPP Co (together "**the Parties**" and each "**a Party**") are parties to a Project Deed (the "**Project Deed**") under which the PPP Cos have agreed to finance, design, construct, commission, operate, maintain and repair a tollroad, maintain and repair certain non-tollroad works and design and construct a busway, EWAG and related works.
- B. By written notice dated *[to be inserted]*, *[insert the State or a PPP Co as applicable]* has required that the matter described in annexure 1, being a matter that the Project Deed requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 44 of the Project Deed (the "**Matter**").
- C. Pursuant to clause 44 of the Project Deed, the Expert has been appointed to determine the Matter in accordance with the process set out in this agreement.

### Operative provisions

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## 1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this agreement and the Expert accepts the appointment on the basis set out in this agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the determination; and
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in annexure 2.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this agreement.

---

## 2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the

determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

---

### **3. Costs and fees**

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this agreement and their participation in the determination.

---

### **4. Exclusion of liability and indemnity**

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this agreement.

---

### **5. Co-operation of the Parties**

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

---

### **6. Governing Law**

This agreement is governed by and is to be construed in accordance with the laws in force in the State of Queensland.

---

### **7. Jurisdiction**

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Queensland and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

**Annexure 1**  
**The Matter**

*[To be inserted when it comes time for expert determination]*

## **Annexure 2**

### **Rules for Expert Determination Process**

#### **1. Commencement**

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules.

#### **2. Written Submissions**

- 2.1 Within 7 days after the date this process begins, the Party who gave notice under clause 44.3 of the Project Deed ("**Party A**") must, in addition to any particulars provided by Party A under clause 44.3 of the Project Deed, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
- 2.5 The Expert must disclose to both Parties all information and documents received.
- 2.6 If a Party fails to make a written submission, the Expert may continue with the process.

#### **3. Conference**

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Brisbane.
- 3.2 At least 5 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
  - (a) may be accompanied at a conference by legal or other advisers; and
  - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

#### **4. General**

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Project Deed.

4.2 Subject to clause 3.3, meetings and discussions with the Expert must only take place in the presence of both Parties.

4.3 The Expert must:

(a) inform the Parties of:

(i) any relationship or interest with the Parties or their respective officers, employees, the PPP Cos' consultants or agents;

(ii) any interest the Expert has in the matters in dispute; and

(iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,

immediately upon becoming aware of any such circumstances; and

(b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise, terminate the proceedings.

#### **5. The Determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 60 days after the Expert's acceptance of appointment, the Expert must:

(a) determine the Matter between the Parties; and

(b) notify the Parties of that determination.

5.2 The determination of the Expert must:

(a) be in writing stating the Expert's determination and giving reason;

(b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and

(c) meet the requirements of the Project Deed.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a notice of dissatisfaction is given in accordance with clause 44.6(a) of the Project Deed.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

#### **6. Costs**

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

**7. Modification**

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

**8. Proportionate Liability**

Notwithstanding anything else, to the extent permissible by law, the Expert will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to Expert determination pursuant to clause 44 of the Project Deed.

## **Appendix to Rules for Expert Determination Process - Code of Conduct for an Expert**

1. The function of the Expert is to make a determination of the Matter in accordance with the Project Deed and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

**Annexure 3**  
**The Expert's Fees and Disbursements**

*[To be inserted when it comes time for expert determination]*

**Signed** as an agreement.

**Signed** for and on behalf of the State by *[insert name]* in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**Signed** for and on behalf of **APL Co Pty Limited** ACN 609 262 615 by *[insert name]* in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**Signed** for and on behalf of **TQ APL Asset Co Pty Limited** ACN 609 390 454 as trustee of the **TQ APL Asset Trust** by *[insert name]* in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

**Signed** by the Expert *[insert name]* in the presence of:

---

Signature

---

Signature of Witness

---

Name of Witness in full

## **Schedule 11 (Expedited arbitration rules)**

### **(Clause 44.11)**

#### **1. Arbitration Notice and Reply**

1.1 The party referring the Dispute to arbitration ("**Claimant**") must within 5 Business Days of giving notice under clause 44.9(a) of the Project Deed, give to the other party ("**Respondent**") a notice in writing ("**Arbitration Notice**"). The Arbitration Notice must set out, in brief, the following matters:

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

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

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

#### **2. Pleadings**

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

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

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

#### **3. Evidence**

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

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

3.3 Within 20 Business Days of the date for delivery of the response to the evidence-in-chief, each party must deliver all evidence (including sworn witness statements and documents) in reply to the evidence in response that it wishes to rely upon.

3.4 Within 15 Business Days of the date for delivery of the evidence in reply, each party must deliver all expert reports in chief upon in support of its contentions or counter-contentions that it wishes to rely upon.

3.5 Within 30 Business Days of the date for delivery of the expert reports in chief, each Party must deliver all expert reports in response that it wishes to rely upon.

#### **4.1 Discovery**

4.1 Save as set out in this section 4, no party is entitled to discovery.

4.2 Within 10 Business Days of the close of pleadings, each party must provide to the other parties a list of all documents in its possession, custody or power relevant to the issues in the Dispute.

4.3 Within 10 Business Days of the receipt of the other parties' list of documents any party may make a request for discovery of any specified document or class of documents. Any such request must state why discovery of such document or documents is necessary for the fair and expeditious resolution of the Dispute.

4.4 The party receiving a request for discovery must comply with the request within 10 Business Days.

4.5 If the production of any of the documents requested is objected to, or no documents are produced, the requesting party may make an application to the arbitrator to determine whether, and if necessary how, such documents should be produced.

#### **5. Powers of the Arbitrator**

5.1 The arbitrator must act fairly and impartially and give each party a reasonable opportunity to be heard. The arbitrator must determine every Dispute according to law.

5.2 Each party must comply with all requirements of this section and the orders and directions of the arbitrator within the time-limits prescribed. A party may not rely upon any pleading, evidence or request for discovery delivered or amended after the time-limits prescribed, except with the leave of the arbitrator. The arbitrator may only grant such leave where:

- (a) it is satisfied that there are adequate grounds for the leave;
- (b) it is satisfied that granting leave in such circumstances would not prejudice the rights of the other party; and
- (c) it is satisfied that granting leave in such circumstances would not have a substantial detrimental effect on the expeditious and cost-effective resolution of the Dispute.

5.3 If a party fails, without the leave of the arbitrator, to comply with any requirement of this section or any order or direction of the arbitrator, within the time-limits prescribed, the arbitrator:

- (a) may continue the arbitration of the Dispute in spite of such failure;
- (b) may direct that the party in default is not entitled to rely on any matter, including any allegation or material, which was the subject of the requirement, order or direction;
- (c) may draw any adverse inferences from such failure as he or she thinks fit;

- (d) may make any procedural or other order or direction to ensure that the arbitration of the Dispute is carried out in as fair, cost-efficient and expeditious a manner as is possible in the circumstances; and
- (e) may make any order as to payment of costs of the arbitration of the Dispute in consequence of such failure.

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

## **6. Conduct of the hearing**

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

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

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

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

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

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

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

## **7. Award**

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

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

7.3 The award will be final and binding.

7.4 To the extent possible by law, and in particular the *Commercial Arbitration Act 1990 (QLD)*, the parties agree that there will be no right of appeal from the award of the arbitrator.

## **8. Proportionate Liability**

8.1 Notwithstanding anything else, to the extent permissible by law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration pursuant to clause 44 of the Project Deed.

**Schedule 12 (State Conditions)**

Not applicable.

**Schedule 13 (Approved Advertising signage)**

**(Clauses 12.5(d) and 19.14)**

Not applicable.

**Schedule 14 (Not used)**

## Schedule 15 (Assumed Transport Network Enhancement)

(Clause 23.2)

### Forecast year major road network changes – 2012

Road	Section	Description
Airport Northern Access Road	Gateway Deviation to Domestic Terminal	4 lanes (including 4 lane international terminal link road)
Beckett Road	Rode Road - Albany Creek Road	4 lanes
Beenleigh Road	Remaining sections to Logan Road	4 lanes
Beenleigh Road	Persse Road - Millers Road	4 lanes + grade separation of rail line
Blunder Road	Crossacres St - Logan Motorway	4 lanes
Blunder Road	Crossacres Street - Stapylton Road	4 lanes + new links
Boundary Road, Wacol	Tile Street - Blunder Road	4 lanes+ new links
Boundary Road, Coopers Plains	Halt Street - Troughton Road, and upgrade Boundary rd/ Orange Grove Rd junction	6 lanes+ grade separation of rail line
Bribie Island Road	Aerodrome Rd - Bribie Island Bridge	4 lanes
Bruce Highway	Boundary Road - Uhlmann Road	6 lanes
Bruce Highway	Uhlmann Road - Caboolture Northern Bypass	6 lanes
Bruce Highway	Dohles Rocks Road - Boundary Road	8 lanes
Caboolture Northern Bypass	Daguilar Hwy to Bruce Highway	4 lane bypass
Centenary Highway / Keliher Road / Boundary Road		Grade separation
Centenary Highway	Brisbane River to Darra	6 lanes (4 lanes plus T2 lanes)
Centenary Highway (South West Arterial)	Cunningham Highway at Yamanto	2 lane extension
Centenary Highway (South West Arterial)	Ipswich Motorway – Logan Motorway	4 lanes
Centenary Highway extension	Augusta Parkway - Cunningham Highway	2 lanes
Dakabin Connection	Old Gympie Rd - Northlakes	2 lanes
East-West Arterial	Airport Drive / Gateway roundabout	Signalisation
East-West Arterial to Airport Drive		Grade Separation at Nudgee, Old Gateway
Eatons Crossing Road	South Pine Road to Queen Elizabeth Drive	4 lanes
Enoggerra Road/ Newmarket Road junction		Upgrade
Francis Road Overpass	Gympie Road to Sparkes Road	2 lanes
Gateway Motorway (Old)	Gateway Bridge - Nudgee Road	Speed reduction
Gateway Motorway Upgrade	Mt Gravatt Capalaba Road - Wynnum Road	6 lanes
Gateway Motorway Upgrade	Wynnum Road to Gateway Bridge	8 lanes
Gateway Motorway Upgrade	Gateway Bridge Duplication	12 lanes
Gateway Motorway Upgrade	New Section	6 lane offline plus north facing ramps

Road	Section	Description
Gympie Road/ Leckie Road	Reconfigured intersection	Ban right turn from Gympie Road
Hale Street Link Bridge	West End to ICB	New bridge – 4 lanes
Hamilton Road	New Road	2 lanes
High Street Everton Park	Stafford Road to South Pine Road	2 lanes
Houghton Highway		6 lanes (4 lanes plus T2 lanes)
Inala Avenue/ King Ave/ Learoyd Road	Blunder Road - Beaudesert Road	4 lanes
Northern Bus Project		Interim Bus lanes on Lutwyche Road (per reference design)
Ipswich Motorway	Logan Motorway Interchange	Upgrade
Ipswich Motorway & Centenary Highway	Wacol - Darra (interim scheme)	6 lanes and interchange
Jones Road/ Augusta Parkway/ Centenary Highway	Redbank Plains Rd - Springfield Parkway	4 lanes
Kittyhawk Drive	Hamilton Road to Murphy Road	4 lanes new link
Lacey Road/ Telegraph Road/ Depot Road	Linkfield Road - Deagon Deviation	4 lanes+ grade separation of the rail line
Linkfield Rd		2 lanes Gympie Road to South Pine Road
Logan Motorway	Paradise Road	Interchange (incl sealing of Paradise Road)
Logan River Road	Fletcher Street - Boundary Street	4 lanes
Logan Road	Chatsworth Road - Kessells Road	6 lanes
Mains Road/ McCullough Street		Intersection Upgrade
Meadowlands Road	Epala Street - Belmont Road	4 lanes
Moggill Road	Kilkivan Street - Pullenvale Road	4 lanes
Moggill Road/ Coonan Street		Intersection Upgrade
Mt Cotton Road	Mt Gravatt Capalaba Road - Tingalpa Creek	4 lanes
Mt Lindesay Highway	Green Rd - Park Ridge Rd	4 lanes
Mt Lindesay Highway	Park Ridge Rd – Stony Camp Rd	4 lanes
North South Arterial	Boundary Rd - Anzac Ave	4 lanes
NSBT		New tunnel – 4 lanes
Old North Rd	Lavarack Rd - South Pine Road	4 lanes
Old North Rd	Youngs Crossing Road to Lavarack Road	4 lanes
Pacific Motorway	Loganlea interchange	Upgrade
Paradise Road	Learoyd Road - Johnson Road	4 lanes
Progress Road	Ipswich Motorway - Centenary Highway	4 lanes
Redbank Plains Road	Collingwood Drive - Kruger Parade	4 lanes
Redland Bay Road	Windemere Road - Vienna Road	4 lanes
River Road	Cunningham Highway to Warrego Highway	4 lanes
Samford Road	Settlement Rd - Ferny Way	4 lanes
Schneider Road	Kingsford Smith Drive - Tradecoast Central	4 lanes
South Pine Road - Sicklefield Street		Network improvements

Road	Section	Description
Stapylton Road	Wadeville Street - Johnson Road	4 lanes
Coronation Drive		Removal of T3 lanes
Airport Drive	Gateway to Lomandra Drive	3 lanes

### Forecast year major road network changes – 2016

Road	Section	Description
Airport Drive	Lomandra Drive	Grade separation
Beams Road	Rail line to Sandgate Road	4 lanes + grade separation of rail line
Beenleigh Road/ Mains Road/ Pinelands Road		Intersection Upgrade
Beenleigh - Redland Bay Road	California Creek Road - Mount Cotton Road	4 lanes
Belmont Road	Manly Road / Wynnum Road - Meadowlands Road	4 lanes
Bruce Highway	Boundary Road - Bribie Island Road	8 lanes
Cleveland - Redland Bay Road	South Street - Boundary Road	4 lanes
Deception Bay Road	Bruce Hwy - Lipscombe Rd	4 lanes
Duncan Road/ Boundary Road	Lyndon Road - Cleveland Redland Bay Rd	4 lanes
East-West Arterial	Sandgate Road to Airport Drive	6 lanes
Ermelo Road	Arterial Meadowlands Rd to New Cleveland Rd	4 lanes
Ermelo Road	New Link - New Cleveland Road	4 lanes + new link for Ermelo Road
Gateway Motorway	Nudgee Road - Deagon Deviation	6 lanes
Gateway Motorway	Mt Gravatt Capalaba Road - Pacific Motorway	8 lanes
Griffith Arterial (Riawena Road)	Beaudesert Rd - Orange Grove Road	6 lanes
Griffith Arterial (Kessels Road / Mount Gravatt Capalaba Road)	Grout Street - Gateway Motorway	6 lanes
Gympie Road	Hamilton Road to Rode Road	8 lanes (6 lanes plus T2 lanes)
Gympie Road	Hamilton Road & Rode Road	6 lane grade separations
Illaweena Street	Beaudesert Road - Gowan Road	4 lanes
Ipswich Motorway & Centenary Highway	Wacol - Darra (ultimate scheme)	8 lanes
Ipswich Motorway Bypass		Off line upgrade 6 lanes
Kallangur Bypass	Anzac Avenue / Bruce Highway - Gympie Road (Lawnton)	New Link – 4 lanes
Kelliher Road / Freeman Road	Garden Road - Blunder Road	4 lanes
Kessels Rd / Beaudesert Rd Junction		Grade Separation of Intersection
Kingsford Smith Drive	Links Avenue - Holt Street	6 lanes
Kingsford Smith Drive	Holt Street - Lomandra Drive	4 lanes
Lemke Road/ Handford Road/ Murphy Road	Depot Road - Gympie Road	4 lanes
Lomandra Drive Upgrade	Qantas Drive – Myrtle town Road	4 lanes
Middle Road	Mount Lindesay Highway to Greenbank Road	4 lanes

Road	Section	Description
Morayfield Road	Gaffield St - Bruce Highway	4 lanes
Morayfield Road	Oakey Flat Rd - Lower King St	6 lanes
Mt Cotton Road	Tingalpa Creek - Lyndon Road	4 lanes
Mt Lindesay Highway	Stony Camp Road - Chambers Flat Road	4 lanes
New Cleveland Road	Manly Road - Old Cleveland Road	4 lanes
New Link Road	Tilley Road/ New Cleveland Road - Kianawah Road/ Wynnum Road	4 lanes
Northern Link	Western Freeway to ICB (at Kelvin Grove)	4 lanes
Nudgee Road	Kingsford Smith Drive - Toombul Road	4 lanes
Old Gympie Road	Anzac Ave - Alma Rd	4 lanes
Pacific Motorway	Gateway Motorway - Mains Road	8 lanes (6 lanes plus T2 lanes)
Pacific Motorway	Mains Road - Stanley Street	8 lanes (6 lanes plus T2 lanes)
Port of Brisbane Motorway	Stage 2 - to Prichard Street	4 lanes
Port of Brisbane Motorway	Gateway Motorway - Lindum Road	4 lanes
Port of Brisbane Motorway	Port Drive	4 lanes
Queens Road	Old Northern Road to South Pine Road	4 lanes
Robinson Road West	Murphy Road to Newman Road	4 lanes + grade separation of rail line
Rode Road	Old North Road to Gympie Road	4 lanes
Schneider Road	Tradecoast Central - Lomandra Drive (& No. 1 Airport Drive)	4 lanes
Settlement Road	Samford Road - Waterworks Road	4 lanes
Sherwood Road	Oxley Road - Oxley Creek	4 lanes
Toombul Road	Nudgee Road - Oates Parade	6 lanes
Trouts Road Extension (Everton Park Bypass)	Stafford Road to South pine Road	4 lanes
Wacol Station Road	Summers Road - Ipswich Motorway	4 lanes
Wadeville Street	Forestlake Boulevard - Stapylton Road	4 lanes
Webster Road/Stafford Road junction		Upgrade
Western Freeway		6 lanes (4 lanes plus T2 lanes)
Wondall Road	Manly Road - Radford Road	4 lanes

### Forecast year major road network changes – 2022

Road	Section	Description
Airport Northern Access Road	Gateway Deviation to International Terminal Road	8 lanes & 6 lanes to domestic terminal
Albany Creek Road	Albany Creek to Gympie Road	6 lanes
Appleby Road/ Maundrell Tce	Stafford Road - Albany Creek Road	4 lanes
Archerfield Road	Ipswich Motorway - Progress Road	4 lanes
Beams Road	Bridgeman Rd - Gympie Road	4 lanes

Road	Section	Description
Beatty Road/ Bowhill Road/ Sherbrooke Road	Granard Road - King Ave	4 lanes
Beaudesert Road	Granard Road - Learoyd Road	6 lanes
Beaudesert Road	Algester Road - Johnson Road	6 lanes
Beckett Road/ Bridgeman Road/ Roghan Road/ Carseldine Road/ Millar Road	Albany Creek Road - Gympie Road including new links	4 lanes
Benson Street/ High Street junction		Upgrade
Bracken Ridge Road	Hoyland Street - Deagon Deviation	4 lanes
Browns Plains Road	First Ave – Chambers Flat Rd	6 lanes
Bruce Highway	Bruce Highway - north of Caboolture Northern Bypass	6 lanes
Camelia Avenue	Pimelea Street to Pullen Road	4 lanes
Cavendish Road		Grade separation of rail line
Centenary Highway	Logan Motorway - Springfield Parkway	4 lanes
Centenary Highway extension	Augusta parkway - Cunningham Highway	4 lanes
Eatons Crossing Road	Queen Elizabeth Drive to Ira Buckby / Warner Road	4 lanes
Gateway Motorway	Bruce Highway - Deagon Deviation	6 lanes
Gateway Motorway	Gateway Bridge - Nudgee Road	6 lanes
Gateway Motorway old alignment	Gateway Deviation to Gateway Deviation	6 lanes
Green Camp Road	Manly Road - New Cleveland Road	4 lanes
Gympie Road	Albany Creek	6 lane grade separations
Hale Street widening	Coronation Drive to ICB	6 lanes
Hellawell Road	Beaudesert Road - Gowan Road	4 lanes
Inner City Bypass	Hale Street to Airport Link	8 lanes (3 lanes eastbound and 4 lanes westbound through RNA tunnel)
Ipswich Motorway	Rocklea - Riverview (Logan Mtwy - Warrego Hwy)	6 lanes
Ipswich Road	Cornwall Street	Grade Separation
Johnson Road	Woogaroo Street - Elliott Court	4 lanes
Kingsford Smith Drive	Riverview Terrace to Nudgee Road	6 lanes
Kingsford Smith Drive	Nudgee Road - Gateway Arterial	6 lanes
Leitchs Road Deviation		4 lanes
Leitchs Road Upgrade	South Pine Road to Kremzow Road	4 lanes
Linkfield Road		4 lanes
Narangba Road		4 lanes
New Link	Pannard Street - Blivest Street crossing	4 lanes inc grade separated rail
North South Arterial	Anzac Ave - Dohles Rocks Rd	4 lanes
North South Arterial	Boundary Road - Deception Bay Road	4 lanes
Nottingham Road	Algester Road - Beaudesert Road	4 lanes
Pacific Motorway	Gateway Motorway - Logan Motorway	10 lanes (8 lanes plus T2 lanes)
Pannard Street	Seventeen Mile Rocks Rd - Darra Ave	4 lanes

Road	Section	Description
Samford Road	Ferny Way - Samford	4 lanes
Schneider Road	Tradecoast Central - Old Gateway (south facing ramps)	2 lanes
Seventeen Mile Rocks Road	Goggs Road - Pannard Street	4 lanes
Shand Street	Stafford Road - Sickelfield Road	4 lanes
South Pine Road	South of Raymont Road	Rail grade separation
South Pine Road	Leitchs Road - Albany Creek Road	6 lanes
South Pine Road / Wardell Street	Kedron Brook to Pickering Street	6 lanes
Stafford Road	Webster and Appleby	Intersection & capacity improvements
Stafford Road	Gympie Road to Webster Road	6 lanes
Underwood Road	Warrigal Road - Millers Road	4 lanes
Wardell Street / Samford Road intersection	Samford Road	Grade separation
Waterworks Road/ Jubilee Tce junction		Grade separation
Wynnum Road	Gateway Motorway - Manly Road	6 lanes
Youngs Crossing Road	Old North Road - Dayboro Road	4 lanes

### Forecast year major road network changes – 2026

Road	Section	Description
Dawson Parade	Samford Road - Patricks Road	4 lanes + grade separation of rail line
Gateway Motorway	Nudgee Road - Deagon Deviation	8 lanes
Gateway Motorway	Pacific Motorway - Logan Motorway	6 lanes
Gympie Road	Beams and Zillmere Roads	6 lanes, grade separations
Ipswich Road	Annerley Road	Grade separation
Ipswich Road	Venner Road	Grade Separation
Ipswich Road	Beaudesert Road and Evans Road	Grade separations
Kingsford Smith Drive	Holt St - Eagle Farm Rd	6 lanes
Logan Motorway	Gateway Mwy – Ipswich Mwy	6 lanes
Mt Gravatt Capalaba Road	Mt Cotton Rd - Brightview St and Tilley Road - Old Cleveland Road	4 lanes each
North South Arterial	Deception Bay Road - Bribie Island Road	4 lanes
Oxley Road	Sherwood Road - Ipswich Motorway	4 lanes

### Forecast year major road network changes – 2031

Road	Section	Description
East - West Link	(SEF to Western Fwy)	4 lanes
Gateway Motorway	Mt Gravatt Capalaba Rd - Pacific Motorway	6 lanes
Kingsford Smith Drive	ICB to Riverview Terrace	6 lanes
Logan Motorway	Gateway Mwy – Pacific Mwy	6 lanes

<b>Road</b>	<b>Section</b>	<b>Description</b>
Mt Lindesay Highway	Logan Motorway to Middle Road	8 lanes
Mt Lindesay Highway	Middle Road to Stony Camp Road	6 lanes
Rickertt Road	Green Camp Road - Tingalpa Creek	4 lanes
Rode Road	Gympie Road to Sandgate Road	4 lanes
Sandgate Road	Old Sandgate Road to Toombul Road	6 lanes
Sandgate Road	Toombul Road to Beams Road	8 lanes
Trouts Road (North West Arterial)	Gympie Arterial to Stafford Road	2 lanes
West Petrie Bypass	Narangba Road to Youngs Crossing Road	4 lanes

## Schedule 16 (Insurances - sums insured and deductibles)

(Clauses 30.1 and 30.2)

### 1. D&C Phase Insurances

Insurances	Minimum Sum Insured	Maximum Deductible
Contract Works Insurance	A sum equivalent to the full value of the whole of the Project Works plus a provision of 15% for escalation in the cost of the Project Works from the date of commencement until the Date of Tollroad Completion, for any one occurrence, plus an additional amount sufficient to cover the cost of demolition and removal of debris, fees for project managers and consultants, and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of the Project Works.	\$10,000,000
Marine Insurance	A limit of indemnity equivalent to not less than the maximum total value of Project Works property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.	10% of the maximum limit of indemnity for any one shipment, or \$500,000, whichever is the lesser.
Third Party Liability Insurance	\$500 million for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance.	\$2,500,000
Professional Indemnity Insurance - AL Project	\$50 million for any one claim and in the aggregate.	\$2,500,000
Professional Indemnity Insurance - NB Project	\$100 million for any one claim and \$200 million in the annual aggregate.	\$2,500,000
Professional Indemnity Insurance - EWAG Project	\$100 million for any one claim and \$200 million in the annual aggregate.	\$2,500,000
Employers' Liability and Workers' Compensation Insurance	As required by Law.	As required by Law.
Motor Vehicle Insurance	<p>With respect to:</p> <p>(a) third party property damage insurance - \$20 million for any one claim and unlimited in the aggregate; and</p> <p>(b) compulsory third party insurance covering death or injury to persons, as required by Law.</p>	<p>With respect to:</p> <p>(a) third party property damage insurance - \$50,000; and</p> <p>(b) compulsory third party insurance covering death or injury to persons, as required by Law.</p>

<b>Insurances</b>	<b>Minimum Sum Insured</b>	<b>Maximum Deductible</b>
Business Interruption Insurance	With respect to the AL Project, all standing charges (including the PPP Cos' debt service obligations) or the loss of gross revenues whichever is the lesser, and with respect to advance loss of profits consequent upon loss, damage or destruction to property insured by Contract Works insurance, a 24 month indemnity period and with respect to delays in start-up consequent upon loss, damage or destruction to property insured by Marine insurance, a 12 month indemnity period.	1. 120 days in the aggregate for all occurrences during the period of insurance; plus 2. an additional 90 days in the aggregate in respect of all occurrences in respect of losses to tunnel works causing delays not exceeding 20 days. When this additional delay period exceeds 90 days, any additional delay period will contribute to and reduce the time excess.
Directors and Officers Insurance	\$20 million per claim and in the aggregate annually.	\$250,000

## 2. O&M Phase Insurances

<b>Insurance</b>	<b>Minimum Sum Insured</b>	<b>Maximum Deductible</b>
Industrial Special Risks	A sum equivalent to the full cost of reinstatement and replacement, including extra cost of reinstatement and replacement, of the whole of the Tollroad and the Maintained Non-Tollroad Works for any one occurrence, plus an additional amount sufficient to cover the cost of demolition and removal of debris, fees for project managers and consultants, and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of the Tollroad.	\$2,500,000
Third Party Liability	\$375 million for any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of insurance (and in the annual aggregate in respect of products liability).	\$2,500,000
Employers' Liability and Workers' Compensation Insurance	As required by Law.	As required by Law.
Motor Vehicle Insurance	With respect to:	With respect to:

<b>Insurance</b>	<b>Minimum Sum Insured</b>	<b>Maximum Deductible</b>
	<p>(a) third party property damage insurance - \$20 million for any one claim and unlimited in the aggregate; and</p> <p>(b) compulsory third party insurance covering death or injury to persons, as required by Law.</p>	<p>(a) third party property damage insurance - \$50,000; and</p> <p>(b) compulsory third party insurance covering death or injury to persons, as required by Law.</p>
Business Interruption Insurance	All standing charges (including the PPP Cos' debt service obligation) or the loss of gross revenues, whichever is the lesser for a 48 month indemnity period.	72 hours
Directors and Officers Insurance	\$20 million per occurrence and in the aggregate annually	\$250,000

## Schedule 17 (KPI Assessment System)

### PART A – KPI Credit

#### 1. Interpretation

"**KPI Assessment System**" has the meaning given to it in clause 19.15(a).

"**KPI Audit Notice**" has the meaning given to it in clause 19.15(d)(ii).

"**KPI Auditor**" has the meaning given to it in clause 19.15(d)(iii)A.

"**KPI Auditor's Report**" has the meaning given to it in clause 19.15(d)(iv).

"**KPI Benchmark**" means the benchmarks listed in column 3 of the table in Part B of this Schedule 17.

"**KPI Data**" has the meaning given to it in clause 19.15(c)(i).

"**KPI Demerit Points**" means the demerit points listed in column # of the table in Part B of this Schedule 17.

"**KPIs**" has the meaning given to it in clause 19.15(a).

#### 2. Application

- (a) If TQ Operations fails to perform any KPI Benchmark, then:
  - (i) the State may apply the relevant KPI Demerit Point calculated in accordance with the table set out in Part B below; and
  - (ii) any damages recoverable by the State in respect of the failure will be reduced by the applicable amount of KPI Credit imposed.
- (b) The applicable KPI Credit will be the amount calculated by multiplying the total KPI Demerit Points for any Financial Year by \$1,000 (indexed annually at CPI from 1 July 2008) ("**KPI Credit**").
- (c) KPI Demerit Points will not apply to the extent that the measured performance is adversely impacted by a Force Majeure Event.

#### 3. Payment structure and Mechanism for determining KPI Credit

- (a) KPI Demerit Points will be measured by TQ Operations either weekly, monthly, quarterly or annually (as contemplated in Part B – Key Performance Indicators) and reported Quarterly to the State.
- (b) KPI Demerit Points are aggregated at the end of each Financial Year. If the total KPI Credit exceeds zero, then:
  - (i) TQ Operations must notify the State of the KPI Credit within 60 days of the end of the Financial Year; and
  - (ii) TQ Operations will apply the KPI Credit in accordance with the State's direction and clause 19.15(f) at the end of each Financial Year.
- (c) Negative KPI Demerit Points can be set-off against KPI Demerit Points at the end of the Financial Year. Negative KPI Demerit Points do not carry forward to the

next year. At the start of each Financial Year the balance of KPI Points will reset to zero.

**4. Completion – Tollroad Completion and Tolling System Completion – mechanism**

- (a) KPIs Commencing from Tollroad Completion: 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.
- (b) KPIs Commencing from Tolling System Completion: 1,2, 3, 4, 5, 6, 7, 8, 9 and 10.

**5. Future Review**

Following the fifth anniversary of Tolling System Completion TQ Operations will review the KPI Regime in consultation with the State as to:

- (a) whether the standards imposed by the KPI Regime are consistent with the services being delivered; and
- (b) how those services are being delivered in accordance with Operation and Maintenance Best Practices.

**6. Ramp-up**

From the Tollroad Opening Date, there will be a ramp-up period for the operational activities. This will be reflected in a reduction in the KPI demerit points applying to each KPI as shown in the table below.

<b>Period</b>	<b>KPI Demerit Points applicable in that period</b>
Prior to Tollroad Opening Date	KPIs will not apply
First 6 months after Tollroad Opening Date	50% of Demerit Points shown in Part B
6-12 months after Tollroad Opening Date	75% of Demerit Points shown in Part B
Greater than 12 months after Tollroad Opening Date	100% of demerit Points shown in Part B

**PART B – Key Performance Indicators**

<b>No</b>	<b>KPI Description</b>	<b>KPI Benchmark</b>	<b>Level of Service</b>	<b>KPI Demerit Points</b>	<b>Assessment Period</b>
<b>Customer service and customer satisfaction</b>					
1	<p>Target level of service – Customer calls answered within 30 seconds.</p> <p>Measurement Method – The sum of the number of calls not answered within 30 seconds is to be calculated each month and rounded down to the nearest 100</p>	70%	Calls answered within KPI Benchmark	1 point for every 100 calls not answered	Monthly

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
2	<p>Target level of service – Customer accounts with financial institutions are credited or debited with the correct amounts</p> <p>Measurement Method – Assessed monthly and excludes customer error and omission</p>	99.999%	<p>&gt; 99.999% correctly credited or debited</p> <p>99.99% to 99.999% correctly credited or debited</p> <p>99.95% to 99.99% correctly credited or debited</p> <p>99.9% to 99.95% correctly credited or debited</p> <p>&lt; 99.9% correctly credited or debited</p>	<p>0</p> <p>5</p> <p>10</p> <p>20</p> <p>50</p>	Monthly
3	<p>Complaint resolution</p> <p>Target level of service – Customers to be contacted by the customer service staff within 2 Business Days of a Customer complaint being notified by a Customer.</p> <p>Measurement Method – The ratio of the number of customer complaints responded to within 2 Business Days in a month, to the total number of customer complaints received in the month, expressed as a percentage.</p>	90% within 2 Business Days	90% of occurrences within the KPI Benchmark	10 points for every occurrence outside KPI Benchmark	Monthly
4	<p>Target level of service – Timeframes for charging transactions to real time accurate tag reading Customers' Accounts</p> <p>Measurement Method – The ratio of the number of real time accurate tag reading customer transactions not charged to Customer Accounts within 2 Business Days in a month, to the total number of real time accurate tag reading Customer transactions charged to Customer Accounts in the month, expressed as a percentage</p>	99% within 2 Business Days	<p>&gt; 99% charged within 2 Business Days</p> <p>98% to 99% charged within 2 Business Days</p> <p>97% to 98% charged within 2 Business Days</p> <p>&lt; 97% charged within 2 Business Days</p>	<p>0</p> <p>5</p> <p>10</p> <p>15</p>	Monthly
5	<p>Target level of service – Accounts are not overcharged</p> <p>Measurement Method – The number of customer accounts over charged in a month</p>	0%	<p>0.1% to 0%</p> <p>0.2% to 0.1%</p> <p>0.3% to 0.2%</p> <p>&gt;0.4%</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>	Monthly
6	Target level of service – Correct toll or fee is assigned to correct account of complying vehicles	0.1%	<p>0.2% to 0.1%</p> <p>0.3% to 0.2%</p>	<p>10</p> <p>40</p>	Monthly

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
	Measurement Method – The ratio of the number of assigned tolls or fees not charged to the correct customer account, to the total number of tolls or fees charged to Customer Accounts in the month, expressed as a percentage		0.4% to 0.3%  >0.4%	60  80	
7	<p>Target level of service – Applications for tollroad accounts correctly responded to within 5 Business Days of receipt by mail</p> <p>Measurement Method – The ratio of the number of applications for tollroad accounts not responded to within 5 Business Days of receipt by mail, to the total number of applications for tollroad accounts received by mail in the month, expressed as a percentage</p>	99%	99% of occurrences within the KPI Benchmark	1 point for every occurrence outside KPI Benchmark	Monthly
<b>Communication and community obligations</b>					
8.	<p>Tolls, fees and customer terms provided publicly via the Preferred Tollroad Service Provider's website and call Centre, must reflect current applicable rates and conditions</p> <p>Measurement Method - Number of material errors in information provided to customers via the website, to the total number of material information included on the website</p>	99%	90% to 100% accurate  80% to 90% accurate  < 80% accurate	0  5  10	Monthly
9	<p>Target level of service – Design and maintain a Project web site.</p> <p>Availability and accuracy of information provided</p> <p>Measurement Method – Availability is measured as the number of hours the service is available a month</p>	99%	90% to 100% available  80% to 90% available  < 80% available	0  5  10	Monthly
10	<p>Target level of service – Provide, maintain and staff a free-call 1800 community enquiry telephone service, 7 day a week, 24 hours per day</p> <p>Measurement Method – Availability is measured as the number of hours the service is available a month</p>	99%	90% to 100% available  80% to 90% available  < 80% available	0  5  10	Monthly
11	Target level of service – Prepare for the State a weekly “Issues and Activity Report” containing details of all community liaison, communication, marketing and consultation activities, community enquiries, response times to calls, complaints, issues arising from stakeholder meetings and any other potential issue and what corrective	1 Business Day after the end of the week.	>1 to 2 Business Days after the end of the week  > 2 Business Days after the end of the week	1  2	Weekly

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
	<p>action was taken to close out or manage issues. This must be delivered on the first Business Day after the end of the week.</p> <p>Measurement Method – Availability is measured as the number of Business Days the report is delivered after the end of the week.</p>				
12	<p>Provide the State with a monthly report detailing a three month outlook of proposed community liaison, marketing and communication activities, including target audiences, timing and possible media opportunities.</p> <p>Measurement method: Availability is measured as the number of days the report is delivered after the end of the month.</p>	100%	<p>Within 7 days after the end of the month</p> <p>&gt;7-14 days after the end of the month</p> <p>&gt;14 days after the end of the month</p>	<p>0</p> <p>1</p> <p>2</p>	Monthly
13	<p>Target level of service – A KPI Report detailing performance against each KPI and a Report on a three monthly basis to the State (six hard copies of each report and one copy in *PDF format) and Independent Verifier (one hard copy and one copy in *PDF format), containing the information required under the Project Deed, Documentation Schedule (Attachment 2 to Annexure 9 Part 1 of the Performance Specification) is submitted within 20 Business Days after the end of each Quarter.</p>	100%	<p>&gt;20-40 Business Days after the end of the Quarter</p> <p>&gt; 40 Business Days after the end of the Quarter</p>	<p>2</p> <p>4</p>	Quarterly
<b>Environmental</b>					
14	<p>Air Quality – In Tunnel</p> <p>Target level of service – Internal air quality complies with the following goals (except in the event of an Incident):</p> <p>CO &lt; 70ppm (15 min TWA) for traffic speeds &gt; 20km/hr</p> <p>NO2 &lt; 1ppm (15min TWA)</p> <p>Extinction co-efficient &lt; 0.005m-1 (15 min. TWA) for traffic speeds &gt; 20km/hr</p> <p>Measurement Method – Measured as the number of exceedances of one or more of the above goals in a quarter as recorded by a properly functioning tunnel air quality monitor.</p>	<2	<p>&lt; 2 exceedances</p> <p>2 to 3 exceedances</p> <p>4 to 5 exceedances</p> <p>&gt;5 exceedances</p>	<p>0</p> <p>5</p> <p>10</p> <p>15</p>	Quarterly
15	<p>Air Quality – Ambient</p> <p>Target level of service – Tunnel</p>	0	<p>No exceedances</p> <p>1 exceedance</p>	<p>0</p> <p>5</p>	Quarterly

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
	<p>operation (excluding Incidents) does not substantially contribute to ambient air quality exceeding the following goals:</p> <p>CO &lt;8ppm (8 hr TWA)*</p> <p>NO<sub>2</sub> &lt; 63 µg/m<sub>3</sub> (annual mean)  NO<sub>2</sub> &lt; 0.12 ppm or 245 µg/m<sub>3</sub> (1-hour maximum)</p> <p>PM<sub>10</sub>&lt;50 µg/m<sup>3</sup> (24 hr TWA)**  PM<sub>10</sub>&lt;50 µg/m<sup>3</sup> (annual mean)  PM<sub>2.5</sub>&lt;25 µg<sup>3</sup> (24 hr TWA)**  PM<sub>2.5</sub>&lt;8 µg/m<sup>3</sup> (annual mean)  TSP &lt;90 µg/m<sup>3</sup> annual mean</p> <p>* one day per year allowable exceedance  ** five days per year allowable exceedances</p> <p>Exceedences due to external events are not counted (eg. fires, dust storms, major construction works, etc).</p> <p>Measurement Method – Measured as the number of exceedances of one or more of the above goals in assessment period to have been caused or substantially caused by the tunnel and recorded by validated data from an ambient air quality monitoring station compliant with AS 2922.</p>		<p>2 exceedances</p> <p>3 or more exceedances</p>	<p>10</p> <p>15</p>	
16	<p>Water Quality</p> <p>Target level of service – Water discharged from water treatment plant complies with operating parameters.</p> <p>Measurement Method – Number of exceedances of one or more criterion in the assessment period.</p>	100%	<p>0 to 1 exceedance</p> <p>2 to 5 exceedances</p> <p>6 to 9 exceedances</p> <p>10 or more exceedances</p>	<p>-10</p> <p>0</p> <p>10</p> <p>20</p>	Quarterly
<b>Quality assurance</b>					
17	<p>Quality Assurance</p> <p>Target level of service – Annual external audit of the O&amp;M Contractor’s quality system identifies no major non-conformances as assessed by the external auditor.</p>	0 Major non-conformances	<p>1 Major non-conformances</p> <p>2-3 Major non-conformances</p> <p>&gt;3 Major non-conformances</p>	<p>1</p> <p>2</p> <p>4</p>	Annually
<b>Operations and Maintenance Requirements</b>					
18	<p>Communications</p> <p>Target level of service – Maintain at all times ability to communicate with:</p> <p>(i) the TCR and BMTMC; and</p>	99.99%	<p>&gt; 99.99% availability</p> <p>&gt;99.9% to ≤99.99% availability</p> <p>≥99.8% to ≤99.9%</p>	<p>0</p> <p>2</p> <p>4</p>	Quarterly

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
	<p>(ii) Emergency Services agencies personnel in command of the Incident response and other relevant Authorities as defined in the RNIA.</p> <p>Measurement Method – Measured as the ratio of the total hours of communication availability over a quarter, to the total number of hours in the quarter, expressed as a percentage.</p>		<p>availability</p> <p>&lt; 99.8% availability</p>	6	
19	<p>Availability – Tollroad</p> <p>Target level of service – An annual calendar of planned maintenance closures shall be established at the commencement of each calendar year. After that, target no additional unplanned closures of a full carriageway of the Tollroad, (except in responses to incidents).</p> <p>Measurement Method – Availability is measured as a period of minutes (assessed as a percentage of the specified maximum allowable closure set out in the Performance Specification) of unplanned closures of a full carriageway or single lane or partial ramp (except in response to Incidents) that are additional to the specified maximum allowable closure in the assessment period each of the North-east Connection at Clayfield (including ramp connection at Kedron) to the Southern Connection at Windsor (<b>NE Connection</b>) or the Southern Connection at Windsor to the North-east Connection at Clayfield (including ramp connection at Kedron) (<b>S Connection</b>).</p> <p>For the purposes of this KPI each peak, mid-peak or off peak period of additional minutes of each unplanned single lane, partial ramp or elevated structure closure and full closure at each of the NE Connection and S Connection, as specified in the Performance Specification, will accrue KPI Demerit Points on the following basis.</p>	0 exceedances of maximum allowable closures as set out in the Performance Specification	Percentage of minutes of additional closures exceeding maximum allowable closures beyond which a KPI Demerit Point will be incurred	1 per additional period of minutes	Annually
	Peak periods: 5 am to 10 am and 3 pm to 10 pm		5%		
	Mid-peak periods: 10 am to 3 pm and 8 pm to 10 pm		10%		
	Off-peak period: 10 pm to 5 am		20%		

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
<b>Incident Management</b>					
20	<p>Response Times – Incidents (initial response)</p> <p>Target level of service – Initial response by operator 2 minutes from detection of incident.</p> <p>Measurement Method – Measured as average response time over the assessment period.</p>	2 minutes	<p>&lt; 2 minutes</p> <p>2 minutes</p> <p>&gt; 2 to 3 minutes</p> <p>&gt; 3 to 4 minutes</p> <p>&gt; 4 minutes</p>	<p>-10</p> <p>0</p> <p>10</p> <p>20</p> <p>30</p>	Monthly
21	<p>Response Times – Incidents (field response)</p> <p>Target level of service – Where it is most appropriate for the field response to be undertaken by the O&amp;M Contractor, the response time between the activation of the appropriate response and the attendance of the appropriate response team at the Incident site not to exceed:</p>				Quarterly
	<ul style="list-style-type: none"> <li>6 minutes in case of a tunnel fire (including a suspected fire risk);</li> </ul>	<p>Tunnel fire (including suspected fire risk): ≤ 6 minutes</p>	<p>&lt; 5</p> <p>≥ 5 to &lt; 6</p> <p>6</p> <p>&gt; 6 to ≤ 7</p> <p>&gt; 7 to ≤ 8</p> <p>&gt; 8</p>	<p>-20</p> <p>-10</p> <p>0</p> <p>10</p> <p>20</p> <p>30</p>	
	<ul style="list-style-type: none"> <li>10 minutes when requested by QDMR and Council or as nominated in the Incident Response Management Plan; or</li> </ul>	<p>When requested by QDMR and Council or as nominated in the Incident Response Management Plan: ≤ 10 minutes</p>	<p>&lt; 8</p> <p>≥ 8 to &lt; 10</p> <p>10</p> <p>&gt; 10 to ≤ 12</p> <p>&gt; 12 to ≤ 14</p> <p>&gt; 14</p>	<p>-20</p> <p>-10</p> <p>0</p> <p>10</p> <p>20</p> <p>30</p>	
	<ul style="list-style-type: none"> <li>20 minutes for other events.</li> </ul>	<p>Other events: ≤ 20 minutes</p>	<p>&lt; 16</p> <p>≥ 16 to &lt; 20</p> <p>20</p> <p>&gt; 20 to ≤ 22</p>	<p>-20</p> <p>-10</p> <p>0</p> <p>10</p>	

No	KPI Description	KPI Benchmark	Level of Service	KPI Demerit Points	Assessment Period
	Measurement Method – Measured as median response time from dispatch of the response team to arrival at the incident site over the site assessment period.		> 22 to ≤ 24  > 24	20  30	
<b>Aesthetics</b>					
22	Aesthetics/Public Perception  Target level of service – Rapid response times to nominated Defects that impact upon the aesthetics or public perception of the Tollroad (ie. landscaping, graffiti, damaged wall panels, etc  Measurement Method – Measured as average improvement upon, or delay in complying with, the nominated response times after Defect detection (excluding Defects requiring a lane closure for rectification), as shown in the code of maintenance standards for Defects identified as impacting on public perception of the Tollroad.	0-2 days	Greater than 2 days ahead of the nominated response times  0 to 2 days ahead of the nominated response times  0 to 2 days behind the nominated response times  2 to 4 days behind the nominated response times  Greater than 4 days behind the nominated response times	-20  -10  0  10  20	Yearly

## **Schedule 18 (Permitted Share Capital Dealings)**

### **(Clause 34.8)**

Any one or more of the following is a Permitted Share Capital Dealing:

- (a) A change to (or the transfer of the share capital or units in) a Holding Entity, provided that it does not result in:
  - (i) a change in Control of that Holding Entity; or
  - (ii) an entity becoming a Controlling Unit Holder of that Holding Entity; or
  - (iii) a change in the Controlling Unit Holder of that Holding Entity.
  
- (b) The following issues or transfers of the share capital or units are also Permitted Share Capital Dealings issue of units to the public pursuant to, or as envisaged by, a product disclosure statement or prospectus (or a combination of the two) lodged by the Holding Entities, which for the avoidance of doubt may include the issue of units pursuant to a public offer, broker firm offer or institutional offer, provided the issue does not result in:
  - (i) a change in Control of that Holding Entity; or
  - (ii) an entity becoming a Controlling Unit Holder of that Holding Entity; or
  - (iii) a change in the Controlling Unit Holder of that Holding Entity.
  
- (c) A change in trustee or the responsible entity (as defined in the Corporations Act) in accordance with the constitution of the Holding Entity (or a change or transfer of the issued shares of that trustee or responsible entity).

## Schedule 19 (Terms of Perpetual Lease)

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### 1. Purpose

Transport (Toll road), Purposes Ancillary To Transport (Toll road) And Other Commercial And Community Purposes

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### 2. Conditions

- (a) The lessee shall use the leased land for transport (toll road), purposes ancillary to transport (toll road) and other commercial and community purposes as approved by the Chief Executive of the Department administering the Transport Infrastructure Act.
- (b) The lessee must keep any noxious plants, on the leased land, under control.
- (c) The lessee must give the Minister administering the *Land Act* 1994 (Qld), the Information the Minister administering the *Land Act* 1994 (Qld) asks for about the lease.
- (d) The lessee has the responsibility for a duty of care for the leased land.
- (e) The lessee shall comply with all other statutory obligations of the *Land Act* 1994 (Qld) or any Act in substitution for that Act and with any other Act which deals with the construction, maintenance and management of a toll road on, above or below the surface of the ground in so far as those statutory obligations apply to the lessee.

## Schedule 20 (Excluded Intellectual Property Rights)

### Third Party Software / Firmware

#### OMCS

IP/Program	Type	Version	Description
Traffic Management System -			
OMCS Traffic Management including:-	Sub	V1.001	Traffic Management
1) InfoPlus.21 database schema, Device management and simulation software, Interface modules, Device drivers, PLC Management code and HMI displays for the following types of Traffic Management Devices			
Traffic Loop Detectors			
Video Traffic Detection			
Lane Use Signs			
Tunnel Message Signs			
Changeable Message Signs			
Variable Message Signs			
Variable Speed Limit Signs			
Travel Time Signs			
Freeway Condition Signs			
Ramp Control Signs			
Movable Physical Barriers			
Fixed CCTV Cameras			
PTZ CCTV Cameras			
Video Monitors			
Movable Medians			
Motorist Emergency Telephones			
Over-Height Vehicle Detectors			
In-Pavement Lights			
Emergency Radio Audio Break-in			
Public Address			
Weigh-In-Motion			
2) InfoPlus.21 database schema, Device management and simulation software, Interface modules, Device drivers, PLC Management code and HMI displays for the following type of Traffic Management Monitoring and Control Functions			
Vehicle Traffic Statistics Aggregation			
Vehicle Traffic Congestion Detection and Classification			



Valve			
Sump Pump			
Pit Ventilation Fan			
Ground Water Pump			
Substation Air Conditioner			
Substation Damper			
Substation Ventilation Fan			
Tunnel Lights			
Exhaust Fan Damper			
Exhaust Fan			
Supply Fan			
Supply Fan Damper			
Modulating Damper			
Fire Damper			
Jet Fan			
Low Voltage Transformer			
MV Withdrawable Circuit Breaker			
MV Motorised Isolator			
MV Circuit Breaker			
MV Transformer Motorised Feeder Circuit Breaker			
MV Bus Tie Circuit Breaker			
HV Transformer			
HV Circuit Breaker			
Exit Light			
Strobe Light			
2) InfoPlus.21 database schema, Device management and simulation software,			
Interface modules,			
Device drivers,			
PLC Management Code and HMI displays			
for the following type of Plant and Tunnel Management Monitoring and Control Functions			
Ventilation Control			
Fire Control			
Drainage Control			
Emergency Lighting Control			
Egress Passage Pressurisation			
Egress Passage Lighting Control			
Substation Ventilation Control			
HV Power Control and Monitoring			
Emergency and Backup Power Control and Monitoring			
Portal Lighting Control			
Tunnel Lighting Control			
Alarm and Fault Management			
Report Management			
<b>IP/Program</b>	<b>Type (P/S)</b>	<b>Version</b>	<b>Description</b>

OMCS Facilities Management including:-	Sub	V1.001	Traffic Management
1) InfoPlus.21 database schema,			
Device management and simulation software,			
Interface modules,			
Device drivers,			
PLC Management code,			
HMI displays			
for the following types of Facility Devices:-			
Computer Server Monitoring			
User Workstation Monitoring			
Server Redundancy Monitoring			
Redundant Network Configuration Monitoring			
Road-Side Cabinet			
Tunnel Control Equipment Cabinet			
Network Switch			
Serial Server			
I/O Processor			
Video Matrix Switch			
Large Screen Displays (Video Wall)			
PLC's			
PLC I/O network monitoring			
RTA CMCS Interface (NTCIP sub-centre manager)			
HMI/InfoPlus.21 Server Interface	Sub	v1.0.0	IP.21 HMI Server
HMI Application Program (Excluding Items listed under Proprietary Information)	Sub	v1.0.0	IP.21 HMI Client Component
HMI Client Component including:-			
HMI/IP.21 Client Interface			
Device Displays listed above			
Trend Display Component			
Normal Summary Component			
History Summary Component			
HMI IP.21 database aware Forms Components including:-			
Button			
Label			
TextBox			
Combo Box			
Form			
<b>Existing Device IP</b>	<b>Type</b>	<b>Version</b>	<b>Description</b>
VSLs Hardware Design	Sub		VSLs Display
Intelligent Protocol Converter	Sub		Display Interface Controller
Advance Lane Use Sign (VSLs + LUS)	Sub		Combined LUS and VSLs
Tunnel Message Signs	Sub		Tunnel Message Signs

## Subcontractor Intellectual Property

IP/Program	Type	Version	Description
Microsoft Windows Operating Systems	3rd Party	Windows 2003	Server Operating System
Microsoft Windows Operating Systems	3rd Party	Windows XP	Server Operating System
Microsoft Office	3rd Party	10	Word/Excel/Powerpoint
Adobe Reader	3rd Party	3.1	PFD Reader
Ethereal	3rd Party	0.10.9	Network Analyser
HiVision	3rd Party	Rel 6.21F	Network Management Software
InfoPlus.21	3rd Party	v9	Realtime Database
OpenOffice	3rd Party	v2	Office Software
RSLogix 5000	3rd Party	V.15.01	PLC Programming Software
RSLogix 500	3rd Party	V7.22	PLC Programming Software
Tardis 2000	3rd Party	k9v14	NTP time client/server
Ultra VNC	3rd Party	v1.02	Remote control software
Marathon EverRun	3rd Party	v6.1.2	Server Redundancy Software
Industrial SNMP	3rd Party	V4.0	SNMP server
Visual Studio	3rd Party	2003	Microsoft Code IDE
MapXtreme	3rd Party	v6.6	Map Display Component
Veritas Backup	3rd Party	tba	System Backup software
VIDS Software	3rd Party	tba	Video Incident Detection Software
Crystal Reports	3rd Party	tba	Report formatting Software

Versions will be as applicable at time of delivery.

## Third Party Software/Firmware

IP/Program/Product Type	Type	Version	Description
Programmable Logic Controller (PLC)	3rd Party	tba	tba
Operating System Software	3rd Party	tba	tba
PLC Ethernet Communications Card	3rd Party	tba	tba
PLC I/O Network Communications Cards	3rd Party	tba	tba
PLC Redundancy Modules	3rd Party	tba	tba
PLC Serial I/O Modules	3rd Party	tba	tba
PLC Digital I/O modules	3rd Party	tba	tba
PLC Analogue I/O Modules	3rd Party	tba	tba
Variable Speed Drive Controllers	3rd Party	tba	tba
Soft Motor Starter Controllers	3rd Party	tba	tba
Damper Controllers	3rd Party	tba	tba
Pneumatic Valve Controllers	3rd Party	tba	tba
Energy Monitoring Meters	3rd Party	tba	tba
Power Factor Correction Controllers	3rd Party	tba	tba
Motor Protection/Supervision Relays	3rd Party	tba	tba
Pump Protection/Supervision Relay Devices			
Electrical Protection Relays	3rd Party	tba	tba
Electrical Contactor Devices	3rd Party	tba	tba

Automatic Transfer Switch Controllers	3rd Party	tba	tba
Fluid Level Sensors	3rd Party	tba	tba
Air Quality Measurement Devices	3rd Party	tba	tba
Air Speed Measurements Devices	3rd Party	tba	tba
Emergency Lighting Controllers			
Fire Detection Sensor Devices	3rd Party	tba	tba
Fire Protection Actuators	3rd Party	tba	tba
Fire Control Panel Operating System	3rd Party	tba	tba
Fire EWIS System			
Security Access Control System			
Security Access Control Readers			
Security Access Control Locks			
Security Access Remote Controllers			
Security Access Tags			
Communication Routers, Switches, Hubs and Modems	3rd Party	tba	tba
Fibre Optic Converters			
Video/Serial/Network/RF/AF/Analogue/Digital	3rd Party	tba	tba
Video Cameras	3rd Party	tba	tba
Video Switch Operating System	3rd Party	tba	tba
Video/IP Converters	3rd Party	tba	tba
Serial/IP Converters	3rd Party	tba	tba
AF/IP Converters	3rd Party	tba	tba
Audio Amplifier/Receiver/Transmitter	3rd Party	tba	tba
RF Amplifier/Receiver/Transmitter	3rd Party	tba	tba
RF Encoders/Decoders/Combiners/Splitters	3rd Party	tba	tba
RRB Break-in System			
Audio Announcement System			
Radio Transceivers (Base Stn)			
Radio Transceivers (Mobile)			
Mobile Phone Base Station Equipment			
Video Display Devices	3rd Party	tba	tba
Inductive Loop Traffic Detection Devices	3rd Party	tba	tba
Video Traffic Detection Devices	3rd Party	tba	tba
Microwave Traffic Detection Devices	3rd Party	tba	tba
Video Surveillance Devices	3rd Party	tba	tba
Infrared/Radar Motion Detection Devices	3rd Party	tba	tba
Lane Use Sign Devices	3rd Party	tba	tba
Tunnel Message Sign Devices	3rd Party	tba	tba
Changeable Message Sign Devices	3rd Party	tba	tba
Variable Message Sign Devices	3rd Party	tba	tba
Variable Speed Limit Sign Devices	3rd Party	tba	tba
Movable Physical Barrier Controllers	3rd Party	tba	tba
Movable Median Controllers	3rd Party	tba	tba
PABX Operating System	3rd Party	tba	tba
IP Phone Device	3rd Party	tba	tba
Over-Height Vehicle Detectors	3rd Party	tba	tba
In-Pavement Light Controllers	3rd Party	tba	tba
Analogue Audio Switching Devices	3rd Party	tba	tba

Weigh-In-Motion Controllers	3rd Party	tba	tba
Emergency Exit/Evacuation Light Device	3rd Party	tba	tba
Hydro-carbon Sensor Device	3rd Party	tba	tba
pH Sensor Device	3rd Party	tba	tba
Temperature Sensor Device	3rd Party	tba	tba
Luminance Sensor Device	3rd Party	tba	tba
Battery Charger Controller	3rd Party	tba	tba
UPS Management Device Controller	3rd Party	tba	tba
Diesel Generator Controller	3rd Party	tba	tba
Valve Controller	3rd Party	tba	tba
Vibration Sensor Device	3rd Party	tba	tba
Air Conditioning Controller	3rd Party	tba	tba

## Schedule 21 (Pre-Agreed Modifications)

### (Clause 22.3)

Pre-Agreed Modification 1	Northbound O'Connell Terrace Option
Description	Amend the northbound Airport Link on ramp connection from Campbell Street to connect from O'Connell Terrace, as shown on drawing nos PBA-B25C-ASRAL001-D-101 and PBA-B25C-ASRAL001-D-102 which are included in Exhibit E to the Project Deed.
Election Date	31 January 2009.
Pre-Agreed Modification Cost	<p>Nil.</p> <p>BrisConnections will endeavour to increase the committed IPO Equity amount to offer an amount of approximately \$14 million to be subtracted from the Contract Price should this modification be selected prior to Financial Close. The actual benefit amount would (assuming sufficient equity was raised) be adjusted at Financial Close by the "Closing Protocol" that was initialled for identification by the State, the Original Security Trustee and the BrisConnections Parties on or about the date of Financial Close.</p>
Amendments	<p>Amend the northbound Airport Link on ramp connection from Campbell Street to connect from O'Connell Terrace, as shown on drawing nos PBA-B25C-ASRAL001-D-101 and PBA-B25C-ASRAL001-D-102 which are included in Exhibit E to the Project Deed.</p> <p>Site Access Schedule: the properties between the railway line, Campbell Street, Tufton Street and O'Connell Terrace are added to the Site Access Schedule with a Date Available of 31 January 2010.</p>

<b>Pre-Agreed Modification 2</b>	<b>Gympie Road Options</b>
Description	Access to Lot ID's 271 and 272, being the properties at 3 and 17 Gympie Road, is delayed from the date of 31 October 2008 identified in the Site Access Schedule to any date up to 1 February 2009.
Election Date	1 February 2009.
Pre-Agreed Modification Cost	Subject to Note 1, \$985,269 per day of delayed access to Lot ID's 271 and 272 after 31 October 2008 up to a maximum of \$91.63 million. Payment of the Pre-Agreed Modification Cost will be made by the State to PPP Co 47 months after Financial Close.
Amendments	<p>Site Access Schedule Lot ID's 271 and 272: in the Date Available column replace "31 October 2008" with the date on which the State gives access.</p> <p>Subject to note 2, Project Deed clause 1.1: in the definition of "Date for Tollroad Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 271 and 272 after 31 October 2008 divided by 1.5, up to a maximum of 61 days.</p> <p>Subject to note 2, State Works Deed clause 1.2: in the definition of "Date for Tolling System Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 271 and 272 after 31 October 2008 divided by 1.5, up to a maximum of 61 days.</p> <p>Subject to note 2, NB Works Deed clause 13.1: with respect to the date for handover of the Federation Street Connection replace "31 months" with "31 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 271 and 272 after 31 October 2008 divided by 1.5, up to a maximum of 61 days.</p>

<b>Pre-Agreed Modification 3</b>	<b>Gympie Road Options</b>
Description	Access to Lot ID's 276A to 276F inclusive, being the properties at 49 Gympie Road, is delayed from the date of 1 December 2008 identified in the Site Access Schedule to any date up to 1 February 2009.
Election Date	1 February 2009.
Pre-Agreed Modification Cost	Subject to Note 1, \$1,477,903 per day of delayed access to Lot ID's 276A to 276F inclusive after 1 December 2008 up to a maximum of \$91.63 million. Payment of the Pre-Agreed Modification Cost will be made by the State 47 months after Financial Close.
Amendments	<p>Site Access Schedule Lot ID's 276A to 276F inclusive: in the Date Available column replace "1 December 2008" with the date on which the State gives access.</p> <p>Subject to note 2, Project Deed clause 1.1: in the definition of "Date for Tollroad Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 276A to 276F inclusive after 1 December 2008, up to a maximum of 62 days.</p> <p>Subject to note 2, State Works Deed clause 1.2: in the definition of "Date for Tolling System Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 276A to 276F inclusive after 1 December 2008, up to a maximum of 62 days.</p> <p>Subject to note 2, NB Works Deed clause 13.1: with respect to the date for handover of the Federation Street Connection replace "31 months" with "31 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 276A to 276F inclusive after 1 December 2008, up to a maximum of 62 days.</p>

<b>Pre-Agreed Modification 4</b>	<b>Lutwyche Road Option</b>
Description	Access to Lot ID's 168 and 169, being the properties at 395 and 409 Lutwyche Road, is delayed from the date of 1 November 2008 as identified in the Site Access Schedule to any date up to 1 January 2009.
Election Date	1 January 2009.
Pre-Agreed Modification Cost	Subject to Note 1, \$743,770 per day of delayed access to Lot ID's 168 and 169 after 1 November 2008 up to a maximum of \$45.37 million. Payment of the Pre-Agreed Modification Cost will be made by the State to PPP Co 47 months after Financial Close.
Amendments	<p>Site Access Schedule Lot ID's 168 and 169: in the Date Available column replace "1 November 2008" with the date on which the State gives access.</p> <p>Subject to note 2, Project Deed clause 1.1: in the definition of "Date for Tollroad Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 168 and 169 after 1 November 2008 divided by 2, up to a maximum of 30 days.</p> <p>Subject to note 2, State Works Deed clause 1.2: in the definition of "Date for Tolling System Completion" replace "47 months" with "47 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 168 and 169 after 1 November 2008 divided by 2, up to a maximum of 30 days.</p> <p>Subject to note 2, NB Works Deed clause 13.1: with respect to the date for handover of the Federation Street Connection replace "31 months" with "31 months and x days" with x to be the actual number of days by which access is delayed to Lot ID's 168 and 169 after 1 November 2008 divided by 2, up to a maximum of 30 days.</p>

**Note 1:** The delays arising from Pre-Agreed Modifications 2, 3 and 4 have a concurrent effect on the overall D&C construction program. The impact on the Contract price if two or more of these Pre-Agreed Modification changes are selected is not additive. For example, if all of these modifications are selected the maximum impact on the State Works Contract price is an additional payment of \$1,477,903 per day of delay.

**Note 2:** The delays arising from Pre-Agreed Modifications 2, 3 and 4 have a concurrent effect on the overall D&C construction program. If two or more of these Pre-Agreed Modification changes are selected, the relevant dates referred to in the table will be amended as required for the selected option which causes the greatest delay.

<b>Pre-Agreed Modification 5</b>	<b>Not used</b>
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<b>Pre-Agreed Modification 6</b>	<b>Commercial Development</b>
Description	Amend the design of the Project Works to accommodate future building works above the Airport Link tunnel at Bowen Hills, East of Lutwyche Road at Lutwyche and West of Lutwyche Road at Lutwyche.
Election Date	1 January 2009.
Pre-Agreed Modification Cost	\$5,970,000.
Amendments	<p>Add a new clause 12.6 to the Project Deed as follows:</p> <p>The parties agree that:</p> <p>(a) any provision of the State Project Documents which requires the PPP Cos to warrant that the Buildover Enabling Works are fit for a purpose specified in or ascertainable from a State Project Document, including without limitation clause 13.1(a), (b), (d), 13.2(b), 14.1(b) of the Project Deed such purpose shall be determined exclusively by reference to description of works contained in Schedule 21; and</p> <p>(b) the PPP Cos' aggregate Liability to the State on account of the State's Liability to any third party to which the State sells, leases or otherwise disposes of the sites enabled by the Building Enabling Works shall be limited to, and in no circumstances will exceed, an amount equal to \$12 million.</p> <p>Amend the Project Works as follows:</p> <p>"Buildover Enabling Works" means the works to be undertaken by BC in accordance with this Pre-Agreed Modification 6.</p> <p>The predominant elements of the Development Works include:</p> <ul style="list-style-type: none"> <li>the deletion of all, waterproofing systems, fill works and landscaping works to all the future development areas; and</li> <li>the inclusion of additional vertical structural members located either side of the below tunnels which can carry coincident imposed loads from future structures constructed over the tunnels. These structural arrangements will be refined during design development of the Airport Link and Northern Busway Projects. Future developments would need to be designed to ensure that building structural loads are transferred to the additional vertical structural members described above. All the future development foundation arrangements over the tunnel structures are to be designed such that any interaction with the tunnel structures will be in compliance with the Performance Specification requirements.</li> </ul>
	<p><b>Bowen Hills Area</b></p> <p>Drawing no TJH-AS-SST200-SKT-0014-A1 which is included in Exhibit E to the Project Deed (<b>Diagram A</b>) relating to the Bowen Hills portal area, details the foundations that will be provided to accommodate the construction of future buildings which could span over the tunnels in this location. Diagram A identifies three separate areas:</p>

Pre-Agreed Modification 6	Commercial Development
	<p>Area 1</p> <p>This is the area directly over Airport Link cut and cover tunnel works and the ventilation station structure. Columns will be incorporated into the tunnel and underground structures in the manner shown in Diagram A. The identified columns in the tunnel wall lines will be designed to accommodate working vertical loads typically in the range of 2,300 kN to 3,000 kN. Certain columns will have higher structural capacities up to a maximum working load of 14,000 kN as noted on the diagram. The columns of future buildings could be supported either directly from the columns below or through the use of future transfer structures incorporated into the building design.</p>
	<p>Area 2</p> <p>For the area where future development works will be located above the driven tunnel, ground beams located either side of the tunnel will be provided to accommodate columns at 8.5m centres. A 200 mm thick groundslab needs to be provided over the driven tunnel at RL 8.5 as part of the future development. Future development columns located at 8.5m centrally along these ground beams would accommodate working loads as described in Diagram A. Lateral stability for any future building structures would need to be independently provided within the future building structures.</p>
	<p>Area 3</p> <p>Development Works over the future Busway tunnel are to be supported by piles either side of the tunnel at 8.5m centres with a slab and beam structure designed to span over the future tunnel.</p> <p>The piles have been designed to accommodate future building loads as described in diagram A. Lateral stability for any future building structure is to be independently provided by the developers, which may be by a reinforced concrete core founded on the north side of the tunnels on an independent foundation.</p>
	<p>Construction Loads</p> <p>Any tower crane would need to be founded outside the tunnel zone on independent piles.</p> <p>Any additional temporary construction load impositions on structures have not been evaluated and are not accommodated by the Buildover Enabling Works.</p>

Pre-Agreed Modification 6	Commercial Development
	<p data-bbox="523 271 954 300"><b>East of Lutwyche Rd at Lutwyche</b></p> <p data-bbox="523 331 1469 454">Drawing no TJH-AK-SST200-SKT-0015-A1 which is included in Exhibit E to the Project Deed (<b>Diagram B</b>) relating to the Lutwyche East area, details the foundations that will be provided to accommodate a future building which could soan over the Busway tunnel at this location.</p> <p data-bbox="523 486 1426 667">Future development structures could span the Busway tunnel with columns located adjacent the tunnel walls in a similar manner to the Bowen Hills site strategy. The columns provided will be located in an 8.5m grid and future development building columns will need to be consistent with this structural module as the tunnel roof structure has not been designed to accommodate concentrated building loads directly.</p> <p data-bbox="523 698 1461 790">Out of balance soil loads and additional surcharges to accommodate construction stage loading must be accommodated in the future development's building structural arrangements.</p> <p data-bbox="523 822 1481 1066">All future concentrated loadings from building lift and stair cores will need to be located outside the tunnel zone. The columns are marked as two types where they are incorporated in the tunnel wall. Type A columns will have an un-factored working load in the range of 10,000 kN max to around 6,000 kN average. The Type B columns will have an un-factored working load in the range of 2,500 kN max to around 2,000 kN average. Any future development columns that are outside the Busway tunnel structure will need to be founded on independent piles.</p> <p data-bbox="523 1097 1366 1189">Any tower crane would need to be founded outside the tunnel zone on independent piles and all other construction loadings would need to be accommodated by the Developers' structure.</p>
	<p data-bbox="523 1218 991 1247"><b>West of Lutwyche Road at Lutwyche</b></p> <p data-bbox="523 1279 1481 1341">Enabling works for that part of the future Commercial Development Sites west of Lutwyche Road have not been specifically designed to date.</p> <p data-bbox="523 1373 1485 1554">Buildover Enabling Works are not required at this location. A future developer could design and provide piers independently founded outside the tunnel's structural zone of influence, 1m from the back of the NB structure. Piles would need to found at or below the invert of the NB tunnel. If rock anchors are present in the NB design there will be sufficient space provided to accommodate for future piles/piers at 8.5 metre centres at no cost to the State.</p>

<b>Pre-Agreed Modification 7</b>	<b>Connection at Northern Busway Stage 1</b>
Description	Revised scope of work at the Southern Connection associated with the tie into the Northern Busway Stage 1 works. Construction of a revised section of the Northern Busway connecting the Stage 1 works to the Project works. The NB Section 1/NB (Windsor to Kedron) interface point as defined elsewhere is relocated as per the drawings referenced below. BrisConnections will tie into the Stage 1 interim off-ramp and construct a turn back under the elevated Busway structure back to the intersection with Butterfield Street. Part demolition of the interim Stage 1 off-ramp connection to Bowen Bridge Road will be required. Further flood mitigation works will be required for the turn back section. Refer to drawings PBA-C148-NFRAL001-S-101-S1, PBA-C148-NFRAL001-S-201-S1 and PBA-C148-NFRAL001-S-202-S1 which are included in Exhibit E to the Project Deed.
Election Date	1 January 2009.
Pre-Agreed Modification Cost	\$16,160,000.
Amendments	<p>Amend the scope of the Project Works to include the design and construction of an extended section of the Northern Busway south of the existing interface point and the exit ramp from the Northern Busway Stage 1 to the intersection with Butterfield Street, as shown on drawing nos PBA-C148-NFRAL001-S-101-S1, PBA-C148-NFRAL001-S-201-S1 and PBA-C148-NFRAL001-S-202-S1 which are included in Exhibit E to the Project Deed.</p> <p>Performance Specification, Annexure 1 Part 1, clauses 4.9.2(ii) and 4.9.3: Busway shoulder widths at the interface between the Northern Busway Stage 1 and on the exit ramp from the Northern Busway Stage 1 to the intersection with Butterfield Street can be reduced from 1.6m to 0.6m.</p>

<b>Pre-Agreed Modification 8</b>	<b>ALOC</b>
Description	Amend the location of the Airport Link Operations Centre (ALOC) building and car park.
Election Date	1 October 2008.
Pre-Agreed Modification Cost	Nil.
Amendments	<p>Amend the scope of the Project Works by relocating the ALOC from the corner of Stafford Road and Clarence Street on to Lot ID's 268A and B (the Department of Emergency Services site), as shown on drawing no CRQ-00120-sk002 which is included in Exhibit E to the Project Deed.</p> <p>Site Access Schedule Attachment 3: amend the drawing to show the ALOC building and car park in its relocated position.</p> <p>Site Access Schedule Attachment 4: amend the Leased Area and the Licensed Maintenance Areas to reflect the relocated ALOC building and car park.</p> <p>Site Access Schedule Lot ID's 1103 to 1110 inclusive and 289 to 293G inclusive: amend Conditions and amend the Purpose of Use to Temporary Area and Leased Area.</p>

<b>Pre-Agreed Modification 9</b>	<b>Lutwyche Road Options</b>
Description	Lot ID's 1071, 1072 and 1073 are removed from the Site Access Schedule Surface Properties. Public access to these properties is to be maintained at all times.
Election Date	30 September 2008.
Pre-Agreed Modification Cost	\$3,320,000.
Amendments	<p>Site Access Schedule Lot ID's 1071, 1072 and 1073: delete these lots from the Surface Properties.</p> <p>Site Access Schedule Attachment 3: amend the Construction Worksite drawings to reflect this change.</p> <p>Performance Specification Exhibit A Annexure 2 Part 2: cut and cover tunnel construction is stopped at the boundary of the car park and Lutwyche Road and jet grouting is performed from Lutwyche Road. After jet grouting, the tunnels under the car park will be driven.</p>

<b>Pre-Agreed Modification 10</b>	<b>TBM Spoil Conveyor</b>
Description	The TBM spoil conveyor must cross Nudgee Road and the Gateway Motorway via an elevated bridge structure conveyor and have no adverse upstream or downstream effects during a 100 year ARI flood event.
Election Date	30 September 2008.
Pre-Agreed Modification Cost	\$4,950,000.
Amendments	<p>Performance Specification Exhibit A Annexure 2 Part 2: the construction methodology is amended so that:</p> <ul style="list-style-type: none"> <li>• the operational parts of the conveyor system (belts, rollers etc) are located above a designed flood level; and</li> <li>• the conveyor crosses Nudgee Rd and the Gateway Motorway via an elevated bridge structure and returns to a lower ground mounted running level to the discharge point on BAC land. Refer to drawing number PBA-C128-AGWWP002-D-101 Rev S1 which is included in Exhibit E to the Project Deed.</li> </ul> <p>The design methodology is amended so that:</p> <ul style="list-style-type: none"> <li>• design flood levels are determined on a risk assessment based approach, taking into account the short operational period of the conveyor;</li> <li>• the hydraulic effects of the conveyor are considered in any flood modelling to ensure that the conveyor does not have any adverse upstream effects during a Q100 flood event; and</li> <li>• the conveyor structure is designed to withstand the hydraulic forces during a Q100 flood event.</li> </ul>

<b>Pre-Agreed Modification 11</b>	<b>TBM Spoil Conveyor - North-Eastern Worksite</b>
Description	The use of a conveyor to transport TBM spoil from the North-Eastern worksite to Brisbane Airport Corporation land is not permitted.
Election Date	1 June 2009.
Pre-Agreed Modification Cost	Nil.
Amendments	<p>A truck haulage operation is used for the transport of all TBM spoil from the North-Eastern worksite.</p> <p>Performance Specification Exhibit A Annexure 2 - Part 2: the construction methodology is amended to remove all references to the use of a spoil conveyor for the transport of TBM spoil from the North-Eastern worksite to Brisbane Airport Corporation land.</p> <p>The construction methodology is amended to include the following two spoil haulage options for the transport of TBM tunnel spoil from the North-Eastern worksite:</p> <p>Option 1:</p> <ul style="list-style-type: none"> <li>• establishment of an acoustic load out structure above the trough structure located between Sandgate Road and Widdop Street as shown on sketch CRQ146- sk001 that is included in Exhibit E to the Project Deed;</li> <li>• utilisation of a section of the permanent trough structure running from the Sandgate Road Bridge to the point where the East West Arterial ramps merge with the Airport Link as a spoil storage and loading area; and</li> <li>• entry and exit points for spoil haulage vehicles along the East West Arterial and then entering or exiting through the temporary road barriers onto the final Airport Link road alignment.</li> </ul> <p>Option 2:</p> <ul style="list-style-type: none"> <li>• transport of spoil out of the TBM tunnels by conveyor located to the west side of Nudgee Road;</li> <li>• utilisation of a storage shed area established on the western side of Nudgee Road with the haulage trucks entering and exiting from Nudgee Road; and</li> <li>• loading of spoil onto trucks within the storage shed by excavators or conventional front end loaders.</li> </ul>

<b>Pre-Agreed Modification 12</b>	<b>Truro Street, Lutwyche Road and Maygar Street</b>
Description	<p>Develop and implement traffic arrangements at Truro Street, Lutwyche Road and Maygar Street in accordance with drawings PBA-P012-NSRAL001-D-102-S1 and PBA-P012-NSRAL001-D-103-S1 which are included in Exhibit E to the Project Deed, that are modified to the extent required to:</p> <ul style="list-style-type: none"> <li>• integrate with PPP Co's Busway design;</li> <li>• retain (or relocate) the fig tree opposite the fire station; and</li> <li>• retain the pine trees along the western boundary of Clark Park.</li> </ul>
Election Date	30 September 2008.
Pre-Agreed Modification Cost	Nil.
Amendments	<p>Project Deed: minor Stage 2 works at the end of Truro Street would need to be completed after NB Completion Date.</p> <p>Performance Specification Exhibit A Annexures 1 and 2 Part 2: the design and construction of the Project Works is amended to include, as a minimum, the following:</p> <ul style="list-style-type: none"> <li>• relocation of the fig tree opposite the fire station;</li> <li>• minor modifications to the existing Albion Road/Lutwyche Road intersection;</li> <li>• minor modifications to the east side kerblines along Lutwyche Road;</li> <li>• realignment of the Busway on the west side of the Albion Road/Lutwyche Road intersection;</li> <li>• reconfiguration of south bound through lane from Lutwyche Road into Albion Road and the associated Bus Lanes;</li> <li>• additional lane southbound on Lutwyche at intersection with Truro Street;</li> <li>• provision for fire appliance egress via Bus Lane;</li> <li>• provision of interim through lane in Truro Street until the Airport Link project is opened; and</li> <li>• closure of Truro Street through lane following opening of Airport Link.</li> </ul> <p>Site Access Schedule: the Site Access Schedule is amended to include additional land to the extent required for the re-alignment of the Busway to the west of the Albion Road and Lutwyche Road intersection.</p>

<b>Pre-Agreed Modification 13</b>	<b>Busway Connections to Gallway Street/New Road</b>
Description	Provision of single lane connections from the Busway at the Federation Street Bus Stops (inbound and outbound) to Gallway Street/New Road.
Election Date	1 January 2009.
Pre-Agreed Modification Cost	\$1,000,000.
Amendments	<p>The scope of the Project Works is amended to include the design and construction of the following:</p> <ul style="list-style-type: none"> <li>• deletion of the southbound Lutwyche Road to southbound Busway connection in the vicinity of Cedric Street;</li> <li>• deletion of the northbound Busway to northbound Lutwyche Road connection in the vicinity of Cedric Street;</li> <li>• provision of a direct connection from Gallway Street/New Road to southbound Busway;</li> <li>• provision of a direct connection from northbound Northern Busway to Gallway Street/New Road;</li> <li>• relocation of the Federation Street Bus Stops (inbound and outbound) from the vicinity of Cedric Street to the south of the Busway and Gallway Street/New Road connections and no more than 200 metres from the intersection with Lutwyche Road; and</li> <li>• provision of an express connection which bypasses the Federation Street Bus Stops (inbound and outbound) from southbound Lutwyche Road to the Mainline Busway.</li> </ul> <p>The amended connections to the Busway and revised location of the Federation Street Bus Stops (inbound and outbound) are as shown in drawings PBA-RFI-NFRAL001-S-001-S2, PBA-RFI-NFRAL001-S-002-S1 and PBA-RFI-NFRAL001-S-003-S1 which are included in Exhibit E to the Project Deed.</p> <p>Requirements of the Performance Specification, Annexure 1 - Part 1 are amended as follows for this modification only:</p> <p>Section 1.4.1 (a) (ii)  “a single lane connection to the Federation Street Bus Stops (inbound and outbound) from Gallway Street/New Road; and”</p>

**Executed** as a deed.