

**Annexure B**

**Amended and restated clauses of the M2 Motorway Project Deed**

**Annexure B - Amended and restated clauses of the M2 Motorway Project Deed (as at the Satisfaction Date as defined in the M2 Upgrade Project Deed)**

# M2 Motorway

## CONSOLIDATED PROJECT DEED

between

ROADS AND TRAFFIC AUTHORITY  
OF NEW SOUTH WALES

and

MINISTER FOR ROADS  
for  
and on behalf of Her Majesty Queen Elizabeth  
the Second in right of the State of New South Wales

and

THE HILLS MOTORWAY LIMITED

and

HILLS MOTORWAY MANAGEMENT LIMITED  
as trustee of the Trust

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## M2 MOTORWAY CONSOLIDATED PROJECT DEED

**THIS CONSOLIDATED PROJECT DEED** is prepared as at the date of the M2 Upgrade Project Deed.

### **BETWEEN:**

1. **ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES**, Level 8, 101 Miller Street, North Sydney, NSW 2060 (**RTA**);
2. **MINISTER FOR ROADS** for and on behalf of Her Majesty Queen Elizabeth The Second in right of the State of New South Wales (**Minister**);
3. **THE HILLS MOTORWAY LIMITED** (A.C.N. 062 329 828), 505 Little Collins Street, Melbourne Vic 3000 (**Company**); and
4. **HILLS MOTORWAY MANAGEMENT LIMITED** (A.C.N. 064 687 645), 505 Little Collins Street, Melbourne Vic 3000 as trustee of the Trust (**Trustee**)

### **BACKGROUND:**

- A. In September 1993, the RTA invited preliminary proposals from the private sector to finance, design, construct, operate, maintain and repair the M2 Motorway.
- B. On 2 December 1993, The Hills Motorway consortium submitted a Preliminary Proposal to finance, design, construct, operate, maintain and repair the M2 Motorway.
- C. On 11 February 1994, the RTA advised The Hills Motorway consortium that it had been selected as the sole proponent to be invited to undertake a more detailed investigation and to submit a Firm Offer based on its Preliminary Proposal.
- D. On 25 February 1994, the RTA sent The Hills Motorway consortium a letter headed "North West Transport Link: Formal Invitation to Submit a Firm Offer", in which the RTA formally invited the Company to submit a Firm Offer to design, finance, construct, operate, maintain and repair the M2 Motorway.
- E. On 16 May 1994, The Hills Motorway consortium submitted a Firm Offer on the basis of which and following negotiations the parties agreed that:
  - (a) the RTA will grant the Company Lease to the Company;
  - (b) the Company will finance, design and construct the Company Road;
  - (c) the RTA will grant the Trust Lease and the Trust Concurrent Lease to the Trustee;
  - (d) Perpetual as trustee of the Trust will procure the financing, design and construction of the Trust Road;
  - (e) Perpetual as trustee of the Trust will grant the Sublease to the Company;
  - (f) the Company will operate, maintain and repair the M2 Motorway; and
  - (g) the Company will levy and keep tolls from M2 Motorway users,

in accordance with this deed as at 26 August 1994.

- F. On 29 October 1997, the RTA consented to the Company creating and issuing refinancing infrastructure bonds subject to this deed being amended in the manner set out in the 1997 Amendment Deed.
- G. On 27 September 1999, the Company, Perpetual (as trustee of the Trust) and others agreed to refinance the financial accommodation provided under the Debt Documentation (as defined in this deed at that time) and to replace, assign and novate the rights and obligations of Westpac Securities Administration Limited (as security trustee) and Westpac Banking Corporation (as agent for the Financiers) to National Australia Bank Limited. The RTA and the Minister consented to the transaction subject to this deed being amended in the manner set out in the 1999 Consent Deed.
- H. On 24 February 2000, as a consequence of the Corporations Law introducing certain provisions that required the Trust to be registered as a managed investments scheme, the Trustee was appointed as responsible entity to manage, and act as trustee of, the Trust and Perpetual was appointed as custodian to hold the assets of the Trust. The RTA acknowledged and consented to the transaction subject to this deed being amended in the manner set out in the MIA Consent Deed.
- I. On 18 June 2004, the Company and the Trustee agreed to further refinance the financial accommodation provided under the Debt Documentation (as defined in this deed at that time). The RTA consented to the transaction subject to this deed being amended in the manner set out in the 2004 Consent Deed.
- J. On 10 June 2005 as a result of an on-market takeover, Transurban Holdings became the owner of all the shares in the Company and Transurban Holding Trustee became the owner of all the units in the Trust.
- K. On 1 May 2009, the Company and the Trustee agreed to further refinance the financial accommodation provided under the Debt Documentation (as defined in this deed at that time). The RTA consented to the transaction subject to this deed being amended in the manner set out in the 2009 Consent Deed.
- L. On or about 25 October 2010 the parties agreed to amend this deed with effect as set out in the 2010 Amending Deed.
- M. On or about 25 October 2010 the parties agreed to undertake the M2 Upgrade and refinance the Project Debt.

## 1. GENERAL MATTERS AND CONDITION PRECEDENT

### 1.1 Definitions

In this deed:

**1997 Amendment Deed** means the deed entitled "M2 Motorway Project Deed – Deed of Amendment" dated 29 October 1997 between the RTA, the Honourable Carl Scully (the Minister for Transport and Minister for Roads for and on behalf of Her Majesty Queen



Elizabeth II in the right of the State of New South Wales), the Company and Perpetual (as trustee of the Trust).

**1999 Amendment Deed** means the deed entitled "Amended and Restated Terms of Project Funding Deed" dated 24 September 1999 between Perpetual (as trustee of the Trust), the Company, Hills Construction, the Manager, the Agent, the Security Trustee and the Participants named in schedule 1 to it.

**1999 Consent Deed** means the deed entitled "M2 Motorway - RTA Consent Deed" dated 27 September 1999 between the RTA, the Honourable Carl Scully MP (Minister for Transport and Minister for Roads for and on behalf of Her Majesty Queen Elizabeth II in the right of the State of New South Wales), the Company, Perpetual (as trustee of the Trust), Hills Construction, Westpac Banking Corporation (as retiring agent), Westpac Securities Administration Limited (as retiring security trustee), the Agent and the Security Trustee.

**2004 Amended and Restated TPFD** means the form of the Amended and Restated TPFD which was annexed to the Second Refinancing Deed.

**2004 Consent Deed** means the deed entitled "M2 Motorway - 2004 Consent Deed" dated on or about 18 June 2004 between the RTA, the Minister, the Company, the Trustee (as responsible entity of the Trust), Hills Construction and National Australia Bank Limited (as agent and security trustee) as amended by the letter of understanding dated 18 June 2004.

**2009 Consent Deed** means the deed entitled "M2 Motorway - 2009 Consent Deed" dated on or about 1 May 2009 between among others, the RTA, the Minister, the Company, the Trustee, Hills Construction and National Australia Bank Limited (as agent and security trustee).

**2010 Amending Deed** means the deed entitled "M2 Motorway – 2010 Amending Deed" dated on or about 25 October 2010 between RTA, the Minister, the Company and the Trustee (as trustee of the Trust).

**2010 Consent Deed** means the deed entitled "M2 Motorway - RTA 2010 Consent Deed" dated on or about the date of the Fourth Refinancing Deed between, among others, the RTA, the Minister, the Company, the Trustee, Hills Construction and National Australia Bank Limited (as agent and security trustee).

**Agent** is National Australia Bank Limited ACN 004 044 937.

**Advance Contribution** has the meaning given to that term in the Equity Subscription Deed.

**Alternative Road** is:

- (a) Epping Road west of its intersection with the M2 Motorway; and
- (b) any other road which gives (or is intended to give) vehicles access to the Northwest Regions of Sydney.

**Amended and Restated TPFD** means the document named the "Terms of Project Funding Deed" dated 26 August 1994 originally between Perpetual, the Company, Hills Construction, the Manager, Westpac Securities Administration Limited (as Security Trustee), Permanent Trustee Company (Canberra) Limited (as Bond Trustee) and the financiers named in it, as subsequently amended and restated by the 1999 Amendment Deed, the MIA Amendment

Deed, the Second Refinancing Deed, the Third Refinancing Deed and the Fourth Refinancing Deed.

**Ancillary Works** are the works relating to drainage basins and related watercourses contained in the Scope of Works and Technical Criteria which are not constructed or located on the Land.

**Annexed Company Lease** is exhibit A.

**Annexed M2 Upgrade Company Lease** is exhibit D1.

**Annexed M2 Upgrade Sublease** is exhibit D2

**Annexed M2 Upgrade Trust Concurrent Lease** is exhibit D3

**Annexed M2 Upgrade Trust Lease** is exhibit D4.

**Annexed Sublease** is exhibit B.

**Annexed Trust Concurrent Lease** is exhibit C.

**Annexed Trust Lease** is exhibit D.

**Authority** is any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) other body,

which has a right to impose a requirement or whose consent is required with respect to the Project or the Land.

**Base Case Equity Return** is a real after tax internal rate of return for a Notional Initial Investor over the Term on its investment in the Company and the Trust of 11.65 percent per annum.

**Base Case Model** is the financial model and assumptions:

- (a) which includes certain projections and calculations with respect to the repayment of the Project Debt and the payment of returns to the Investors; and
- (b) which the parties initialled for identification on or about the date of the M2 Upgrade Project Deed; and
- (c) which, upon M2 Upgrade Final Completion, will have:
  - (i) the operating scenario switch set to "M2 Upgrade Project Included" and "Toll Increase Active"; and
  - (ii) all model integrity checks showing "OK".

**Company Land is:**

- (a) before execution of the Company Lease, the land identified as Company Land in the Plan of the Land; and
- (b) after execution of the Company Lease, the Company Land defined in the Company Lease.

**Company Lease** is the lease of the Company Land which the RTA must grant the Company in accordance with clause 4.1.

**Company Road** is the permanent works to be designed and constructed on the Company Land in accordance with this deed.

**Company's Work** has the meaning given to that term in the M2 Upgrade Project Deed.

**Completion is when:**

- (a) the design and construction of the M2 Motorway (or a stage of the M2 Motorway) satisfy the requirements of the Scope of Works and Technical Criteria except for minor omissions and minor defects which do not prevent it from being opened to the public for the continuous passage of vehicles; and
- (b) the Company has obtained all relevant Authority consents or approvals to open the M2 Motorway or a stage of the M2 Motorway to the public for the continuous passage of vehicles.

**Completion Undertaking** is the deed dated on or about 26 August 1994 between the Contractors, Perpetual (as trustee of the Trust), the Company, Hills Construction, Westpac Securities Administration Limited (as security trustee) and Westpac Banking Corporation (A.R.B.N. 007 457 141), Level 2, 60 Martin Place, Sydney, NSW 2000 (in its capacity as agent for the financiers as defined in that deed).

**Constitution** is the constitution for the Trust after amendment of the Trust Deed as annexed to the MIA Consent Deed, and as amended in 2005 as part of the acquisition by Transurban Holdings of all the shares in the Company and Transurban Holding Trustee of all the units in the Trust.

**Contractors** are Abigroup Limited (A.C.N. 000 358 467), 25-29 Bridge Street, Pymble, NSW 2073 and Obayashi Corporation (A.R.B.N. 002 932 753) Level 23, 225 George Street, Sydney, NSW 2000.

**Contracts Schedule** is schedule 1.

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

**CPI is:**

- (a) the All Groups Consumer Price Index Weighted Average of Eight Capital Cities 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 26 August 1994;
- (b) if there is a change in the coverage of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at 26 August 1994 and the new All Groups Consumer Price Index Weighted Average of Eight Capital Cities is linked to previous All Groups Consumer Price Indexes, CPI is the All Groups Consumer Price Index Weighted Average of Eight Capital Cities;
- (c) if there is a change in the reference base of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at 26 August 1994 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 All Groups Consumer Price Index Weighted Average of Eight Capital Cities from that applying at 26 August 1994 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 All Groups Consumer Price Index Weighted Average of Eight Capital Cities 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 All Groups Consumer Price Index Weighted Average of Eight Capital Cities 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 All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics publishes another index which is:
  - (i) a replacement of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities; and
  - (ii) linked to the All Groups Consumer Price Index Weighted Average of Eight Capital Cities,

all CPIs relevant to this deed must be re-calculated to the same reference base as the replacement index;

- (g) if the All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics publishes another index which is not linked to the All Groups Consumer Price Index Weighted Average of Eight Capital Cities, 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 All Groups Consumer Price Index Weighted Average of Eight Capital Cities is not published and the Australian Bureau of Statistics does not publish another index in replacement of the All Groups Consumer Price Index Weighted Average of Eight Capital Cities, 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.

**Debt Documentation is:**

- (a) any interest rate risk management agreement entered into by the Trustee to limit or otherwise manage its exposure to interest rate fluctuations;
- (b) the Amended and Restated TPFDF;
- (c) the Security Documents;
- (d) the Refinancing Documentation; and
- (e) any other documents entered into in the future in accordance with the Deed of Consent for the purpose of raising or refinancing borrowings of the Trustee.

**Deed of Amendment (2009 RTA Charge)** means the deed entitled "Deed of Amendment (RTA Charge)" dated on or about the date of the M2 Upgrade Project Deed between the RTA, the Company and the Trustee.

**Deed of Charge** means:

- (a) the deed of charge dated 24 August 1994 between the Company, the Trustee and the RTA; and
- (b) the deed of charge dated on or about 1 May 2009 between the Company, the Trustee and the RTA as amended by the Deed of Amendment (2009 RTA Charge) and as otherwise amended from time to time.

**Deed of Consent** is the document named "Deed of Consent" dated 26 August 1994 between the RTA, the Minister, the Company, Perpetual (as trustee of the Trust), Hills Construction, Westpac Securities Administration Limited (as security trustee) and Westpac Banking Corporation (as agent) as amended and novated under the 1999 Consent Deed, as amended by the MIA Consent Deed, the 2004 Consent Deed, the 2009 Consent Deed, and as amended and restated under the 2010 Consent Deed.

**Design Documentation** is all design documentation the Trustee, the Company or their contractors use for the purposes of the Project (including specifications and drawings), but excluding the M2 Upgrade.

**Determining Authority** is a determining authority defined in section 110 of the EPA Act.

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

- (a) is the total of:
  - (i) the Project Debt on that date (excluding, but only prior to the M2 Upgrade Date of Final Completion and not thereafter, any M2 Upgrade Project Debt); and
  - (ii) an amount sufficient to give the Company and the Trustee in aggregate the ability to give the Investors (treated as if those Investors were all Notional Initial Investors (but, prior to the M2 Upgrade Date of Final Completion, excluding any M2 Upgrade Project Securities)), the Equity Return (having regard to amounts that each of the Company and the Trustee have previously received and discounted at a rate to be agreed to take account of early receipt) to that date; and
- (b) does not include any interest on the Project Debt to the extent that it is calculated at a penalty rate.

**Entity** has the meaning given in section 64A of the Corporations Act but is deemed to include a "joint venture" within the meaning of Australian Accounting Standard 19.

**Environmental Impact Determination** is exhibit F and the documents examined and considered in exhibit F.

**EPA Act** is the Environmental Planning and Assessment Act 1979 (NSW).

**Equity Information Memorandum** is the Equity Information Memorandum in respect of the North West Transport Link M2 Motorway, Sydney, Australia prepared by the Company dated 29 March 1994 and the Addendum to it dated 9 August 1994.

**Equity Return** is, at any time, the expected real after tax internal rate of return which a Notional Initial Investor is projected to receive over the Term on its investment in the Company and the Trust, having regard to past, present and projected circumstances (but excluding, for the purposes of calculating that return, any amount actually received by the Company (or any gain actually derived by the Company) as a result of the refinancing infrastructure bond issue made by the Company on or about 28 June 1996 and any related loans, deposits or other transactions). From 29 October 1997 the parenthetical exclusion does not apply to calculations of Equity Return for the purposes of clause 16 of this deed.

**Equity Subscription Deed** means the deed so entitled entered into by the Trustee, (in its capacity as trustee of the Hills Motorway Trust), the Company, Transurban Holdings, the Security Trustee, the Transurban Holding Trustee and RTA dated on or after the date of the M2 Upgrade Project Deed.

**Final Determination** is a decision of a court:

- (a) from which no appeal can be taken; or
- (b) in respect of which the relevant appeal period has expired without an appeal being taken.

**Force Majeure Event** is one or more or a series of the following events:

- (a) fire, lightning, explosion, flood, earthquake, hurricane, malicious damage, natural disaster, sabotage, act of a public enemy, war (declared or undeclared), revolution, radioactive contamination or toxic or dangerous chemical contamination;
- (b) strikes, lockouts, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing (excluding those solely between the Company, the Trustee, their contractors and their respective employees); or
- (c) any other material event or circumstance, the risk of which is not otherwise specifically allocated in the Project Documents and is beyond the control of the Company, the Trustee and their contractors,

which (either separately or together) causes the Company or the Trustee to default in the performance of their obligations under the Project Documents or the Debt Documentation, (excluding obligations in respect of design, construction and completion of the M2 Upgrade), where that default could not have been prevented, overcome or remedied by the exercise by the Company, the Trustee or their contractors of a standard of care and diligence consistent with that of a prudent and competent owner, operator or maintainer of a motorway such as the M2 Motorway, including the expenditure of all reasonable sums of money.

**Fourth Refinancing Deed** means the deed entitled "Fourth Refinancing Deed" to be entered into on or after the date of the M2 Upgrade Project Deed between the Trustee, the Company, Hills Construction, National Australia Bank Limited, each Existing Participant (as defined therein), each New Participant (as defined therein) and each Hedge Counterparty (as defined therein).

**Hills Construction** is Hills Motorway Construction Company Pty Limited, (A.C.N. 066 036 495), Level 1, 25-29 Bridge Street, Pymble, NSW 2073.

**Hills Motorways Parties** means The Hills Motorway Limited and The Hills Motorway Management Limited (as trustee of The Hills Motorway Trust).

**Holding Vehicle** means:

- (a) an Entity that holds all of the shares in the Company and all of the units in the Trust; or
- (b) a Stapled Entity that holds all of the shares in the Company and all of the units in the Trust,

and as at 10 June 2005 the Holding Vehicle is a Stapled Entity which includes Transurban Holdings and Transurban Holding Trust.

**Independent Officer** is a person nominated by the President of the Law Society of New South Wales such as the most recently retired Chief Justice of New South Wales or another person of similar experience and stature.

**Investor** is a person who holds:

- (a) units issued in the Trust;
- (b) shares issued in the Company; or
- (c) both (a) and (b).

**Land** is the Company Land, the M2 Upgrade Land and the Trust Land.

**Land Acquisition Schedule** is exhibit G.

**Law** is:

- (a) Commonwealth, New South Wales or local government legislation including regulations or by-laws;
- (b) common law;
- (c) Authority requirements and consents (including conditions in respect of those consents); and
- (d) guidelines of the Commonwealth, New South Wales or local governments and Authorities with which the Company and the Trustee are legally required to comply.

**Licensed Areas** are:

- (a) the hatched areas on exhibit H; and
- (b) any additional areas agreed between the parties in accordance with clause 3.2(b),

which do not form part of the Land and are required for the purposes of constructing the M2 Motorway (excluding the M2 Upgrade).

**LPMA** means the Land and Property Management Authority.

**Maintenance and Repairs Accrual Account** is the account referred to in clause 9.9(a).

**Manager** is Hills Motorway Management Limited in its capacity as manager of the Trust prior to the MIA Transition.

**Material Adverse Effect** is:

- (a) for the purposes of clause 2.1(e) a material adverse effect on:
  - (i) the ability of the Company or the Trustee to carry out the Project (excluding the design, construction and completion of the M2 Upgrade) in accordance with the Project Documents;
  - (ii) the ability of the Trustee to repay the Project Debt within the Payback Period substantially in accordance with the terms of the Debt Documentation; or
  - (iii) the level or timing of revenues or outgoings of the Project (excluding, in respect of any M2 Upgrade Stage that has not achieved M2 Upgrade



Construction Completion, revenues or outgoings of that M2 Upgrade Stage) and as a result the Equity Return for the Term (compared to the Equity Return if the relevant event had not occurred); and

- (b) for the purposes of clause 2.1(f), a material adverse effect on:
- (i) the ability of the Company or the Trustee to carry out the Project (excluding the design, construction and completion of the M2 Upgrade) in accordance with the Project Documents;
  - (ii) the ability of the Trustee to repay the Project Debt within the Payback Period; or
  - (iii) the level or timing of revenues or outgoings of the Project (excluding, in respect of any M2 Upgrade Stage that has not achieved M2 Upgrade Construction Completion, revenues or outgoings of that M2 Upgrade Stage) and as a result the Equity Return for the Term (compared to the Equity Return if the relevant event had not occurred).

**MIA Amendment Deed** means the deed named "Amendment Deed" between the Company, the Trustee (as responsible entity of the Trust), Hills Construction and National Australia Bank Limited (in its capacity as agent and security trustee) dated 24 February 2000 which amends the Terms of the Project Funding Deed dated 26 August 1994 (as amended by the 1999 Amendment Deed) to reflect the MIA Transition.

**MIA Consent Deed** means the deed of consent to the appointment of responsible entity of the Trust dated on or about 24 February 2000 between Perpetual (as retiring trustee), the Manager, each party named in it as a Consenting Party and Macquarie Corporate Finance Limited which deals with the MIA Transition.

**MIA Transition** means the transition of the Trust to a registered managed investment scheme in March 2000 under the then Corporations Law and the appointment of the Trustee as the responsible entity of the Trust and Perpetual as the custodian of the Trust assets.

**Minister** is any minister responsible for administering:

- (a) Part 5 (Classification of Roads) of the Roads Act 1993 (NSW); or
- (b) any legislation re-enacting or substantially replacing Part 5 (Classification of Roads) of the Roads Act 1993 (NSW).

**M2 Motorway** is the permanent works designed and constructed on the Land in accordance with this deed and on and from the date on which a M2 Upgrade Stage reaches M2 Upgrade Construction Completion, includes that M2 Upgrade Stage.

**M2 Motorway Commencement Date** is the first day on which the entire M2 Motorway (as defined in this deed immediately prior to the Satisfaction Date) is open to the public for the continuous passage of vehicles.

**M2 Motorway Trust Account** is the account referred to in clause 10.6.

**M2 Upgrade** is the upgrade of the M2 Motorway in accordance with the M2 Upgrade Project Deed.

**M2 Upgrade Company Land** is the aggregate of the Stage 1 M2 Upgrade Company Land and the Stage 3 M2 Upgrade Company Land.

**M2 Upgrade Company Lease** is each of the Stage 1 M2 Upgrade Company Lease and the Stage 3 M2 Upgrade Company Lease.

**M2 Upgrade Construction Completion** has the same meaning as Construction Completion in the M2 Upgrade Project Deed.

**M2 Upgrade Date of Construction Completion** has the same meaning as Date of Construction Completion in the M2 Upgrade Project Deed.

**M2 Upgrade Date of Final Completion** has the same meaning as the Date of Final Completion in the M2 Upgrade Project Deed.

**M2 Upgrade Debt Financing Documents** has the meaning given to the term "Capex Finance Documents" in the Amended and Restated TPF.

**M2 Upgrade Documents** has the same meaning as Project Documents in the M2 Upgrade Project Deed.

**M2 Upgrade Event of Default** has the same meaning as "Event of Default" under the M2 Upgrade Project Deed.

**M2 Upgrade Final Completion** has the same meaning as Final Completion under the M2 Upgrade Project Deed.

**M2 Upgrade Land** is the M2 Upgrade Company Land and the M2 Upgrade Trust Land.

**M2 Upgrade Lease** means each:

- (a) M2 Upgrade Company Lease;
- (b) M2 Upgrade Trust Lease;
- (c) M2 Upgrade Trust Concurrent Lease; and
- (d) M2 Upgrade Sublease.

**M2 Upgrade Project Debt** means the actual or contingent indebtedness under the M2 Upgrade Debt Financing Documents.

**M2 Upgrade Project Deed** is the deed entered between RTA, the Minister for Roads, The Hills Motorway Limited and The Hills Motorway Management Limited dated on or about 25 October 2010 for the purposes of the permanent upgrading of the M2 Motorway.

**M2 Upgrade Project Securities** means

those shares in the Company and units in the Trust issued in accordance with the Equity Subscription Deed.

**M2 Upgrade Project Site** means that part of:

- (a) the Project Site; and

(b) any Extra Land,

(each as defined in the M2 Upgrade Project Deed) which is not Company Land or Trust Land.

**M2 Upgrade Stage** means each of Stage 1, Stage 2 and Stage 3 (as defined in the M2 Upgrade Project Deed).

**M2 Upgrade Sublease** is any lease of the M2 Upgrade Trust Land which the Trustee grants to the Company in accordance with clause 4A.7.

**M2 Upgrade Termination Event** means any of the events listed in clause 9.8 of the M2 Upgrade Project Deed.

**M2 Upgrade Trust Concurrent Lease** is each of the Stage 2 M2 Upgrade Trust Concurrent Lease and the Stage 3 M2 Upgrade Trust Concurrent Lease.

**M2 Upgrade Trust Land** is the aggregate of the Stage 2 M2 Upgrade Trust Land and the Stage 3 M2 Upgrade Trust Land.

**M2 Upgrade Trust Lease** is each of the Stage 2 M2 Upgrade Trust Lease and the Stage 3 M2 Upgrade Trust Lease.

**Northwest Regions of Sydney** are the regions identified in exhibit I.

**North West Rail Link** means the 23 kilometre rail link from Epping to Rouse Hill, which is described in pages 34 and 35 of the NSW Government document entitled "Metropolitan Transport Plan - Connecting the City of Cities" dated February 2010.

**Notional Initial Investor** is a notional corporate taxpayer who:

(a) is issued with:

- (i) initial shares in the Company and units in the Trust pursuant to the Equity Information Memorandum; and
- (ii) the M2 Upgrade Project Securities pursuant to the Equity Subscription Deed in the ratio 155:185,

on the basis that one share in the Company is Stapled to one unit in the Trust and that, in relation to the M2 Upgrade Project Securities, the aggregate cost of the investment in M2 Upgrade Project Securities cannot exceed \$275 million less the Advance Contribution; and

(b) holds those shares and units from the date they are issued until the end of the Term.

**Operator** is Tollaust Pty Limited, (A.C.N. 050 538 693), 25-29 Bridge Street, Pymble, NSW 2073.

**Payback Period** is, in relation to any part of the Project Debt, the period starting on 26 August 1994 and ending on the date on which that part of the Project Debt must be repaid under the Debt Documentation or the M2 Upgrade Debt Financing Documents (as applicable) (including any change to that date agreed between the Trustee and the relevant provider of the Project Debt), plus three months.

**Perpetual** is Perpetual Trustees Australia Limited ACN 000 431 827.

**Plan of the Land** is exhibit J.

**Plant** is all plant, machinery, equipment, fixtures, furniture, fittings and other improvements which the Trustee or the Company installs, constructs or places on the Premises for the purposes of the Project.

**Premises** are:

- (a) the Land, the M2 Motorway and the Ancillary Works; and
- (b) until six months after the M2 Motorway Commencement Date, includes the Licensed Areas.

**Project** is:

- (a) the financing, design, construction, operation, maintenance and repair of the M2 Motorway (including the M2 Upgrade); and
- (b) the financing, design, construction, maintenance and repair of the Ancillary Works,

in accordance with this deed and the M2 Upgrade Documents.

**Project Approval** means the approval dated 21 October 2010 issued by the Minister for Planning pursuant to Part 3A of the EPA Act in respect of the M2 Upgrade and all conditions to it, all of which appears as exhibit L and includes all documents incorporated by reference.

**Project Debt** is:

- (a) any actual or contingent indebtedness under the Refinancing Documentation and the Security Documents;
- (b) any refinancing of the facilities referred to in paragraph (a) with the RTA's consent in accordance with clause 9.3 of the Deed of Consent; and
- (c) any moneys payable on the termination of any interest rate risk management agreement entered into by the Trustee to limit or otherwise manage its exposure to interest rate fluctuations in respect of the facilities referred to in paragraphs (a) or (b) provided that the method of calculating the termination amount and the actual calculation of the termination amount is furnished to the RTA.

**Project Debt Repayment Date** is the date on which the Project Debt is repaid.

**Project Documents** are:

- (a) this deed;
- (b) the Company Lease;
- (c) the Trust Lease;
- (d) the Trust Concurrent Lease;

- (e) the Deed of Charge;
- (f) the Deed of Consent;
- (g) the Project Management Services Deed;
- (h) each M2 Upgrade Company Lease;
- (i) each M2 Upgrade Trust Lease; and
- (j) each M2 Upgrade Trust Concurrent Lease.

**Project Facilities Agreement** is the Project Facilities Agreement dated on or about 26 August 1994 between Perpetual (as trustee of the Trust), the Company, Hills Construction and the Financiers defined in that agreement to provide financial accommodation to the Trustee in respect of the Project.

**Project Management Services Deed** is the Project Management Services Deed between the RTA and Hills Construction dated on or about 26 August 1994.

**Project Program** is the Project program referred to in clause 7.2.

**Proprietary Documentation** is:

- (a) the Design Documentation; and
- (b) anything else which the Trustee or the Company uses for the design, construction, operation, maintenance or repair of the M2 Motorway (but excluding the M2 Upgrade) or the Ancillary Works, which is the subject of any intellectual property right.

**Rates** are all charges or other amounts which any Authority levies in respect of the Project or the Land.

**Refinancing Deed** has the meaning given in the 2004 Amended and Restated TPFD (notwithstanding the definition of "Refinancing Documentation" in this deed).

**Refinancing Documentation** means:

- (a) the Deed of Consent;
- (b) the Amended and Restated TPFD;
- (c) the Interest Rate Management Agreements;
- (d) the Refinancing Deed;
- (e) the Operator Undertaking and the novation deed relating to it;
- (f) the MIA Consent Deed;
- (g) the Second Refinancing Deed;
- (h) the 2004 Consent Deed;

- (i) the 2009 Consent Deed;
- (j) the Third Refinancing Deed;
- (k) each Syndicated Facility Agreement;
- (l) each Subscription Deed;
- (m) each Loan Note Deed Poll;
- (n) each Loan Note;
- (o) each Issuer Loan Agreement;
- (p) each Charge;
- (q) each Mortgage;
- (r) each Security Trust Deed,
- (s) the 2010 Consent Deed;
- (t) the Fourth Refinancing Deed; and
- (u) the D&C Consent Deed,

with each term in the paragraphs (other than (a), (b), (d), (f), (g), (h), (i), (j), (s) and (t)) above having the meaning given to it in the Amended and Restated TPFD.

**Related Body Corporate** in relation to a body corporate or an Entity, means a body corporate or an Entity that is a related body corporate under section 50 of the Corporations Act as if a reference to a body corporate includes an Entity and a reference to shares and to issued share capital includes a reference to interests (within the meaning of the Corporations Act).

**responsible entity** has the meaning given to it in the Corporations Act.

**Revenue Account** is the Revenue Account defined in the Amended and Restated TPFD.

**RTA Representative** is the RTA M2 Motorway Project manager or another person the RTA notifies to the Trustee and the Company.

**Satisfaction Date** has the meaning given to that term in the M2 Upgrade Project Deed.

**Scope of Works and Technical Criteria** is exhibit K as amended pursuant to schedule 1 of the M2 Upgrade Project Deed.

**Second Refinancing Deed** means the deed so entitled dated on or about 15 June 2004 between the Trustee (as responsible entity of the Trust), the Company, Hills Construction, National Australia Bank Limited (as agent and security trustee) and each party named in schedule 2 to it.

**Security Documents** are:

- (a) the deed of charge dated 1 May 2009 between the Trustee and the Security Trustee;
- (b) the deed of charge dated 1 May 2009 between the Company and the Security Trustee;
- (c) the deed of charge dated 1 May 2009 between Hills Construction and the Security Trustee;
- (d) the mortgage of Trust Lease executed by the Trustee in favour of the Security Trustee;
- (e) the mortgage of Trust Concurrent Lease executed by the Trustee in favour of the Security Trustee;
- (f) the mortgage of Company Lease executed by the Company in favour of the Security Trustee;
- (g) the mortgage of the sublease executed by the Company in favour of the Security Trustee;
- (h) any mortgage of an M2 Upgrade Trust Lease to be executed by the Trustee in favour of the Security Trustee;
- (i) any mortgage of an M2 Upgrade Trust Concurrent Lease to be executed by the Trustee in favour of the Security Trustee;
- (j) any mortgage of an M2 Upgrade Company Lease to be executed by the Company in favour of the Security Trustee;
- (k) any mortgage of an M2 Upgrade Sublease to be executed by the Company in favour of the Security Trustee;
- (l) the Completion Undertaking;
- (m) the undertaking given by the Operator in favour of the Security Trustee dated on or about 26 August 1994; and
- (n) the undertaking given by Transroute International S.A., 11 avenue du Centre 78 286 Guyancourt, Cedex, France in favour of the Security Trustee dated on or about 26 August 1994.

**Security Interest** is any security or other arrangement which has the same effect as a grant of security which:

- (a) the Trustee grants over its interest in this deed, the Trust Lease or the Trust Concurrent Lease; or
- (b) the Company grants over its interest in this deed or the Company Lease.

**Security Trustee** is National Australia Bank Limited (A.C.N. 004 044 937).

**Service** is any service, including water, electricity, gas, telephone, drainage, sewerage and electronic communications.

**Sign is:**

- (a) any sign or other medium used for advertising or display purposes; or
- (b) a sign publicising the existence of the M2 Motorway.

**Stage 1, Stage 2 and Stage 3** have the same meaning as in the M2 Upgrade Project Deed.

**Stage 1 M2 Upgrade Company Land** is:

- (a) before execution of the Stage 1 M2 Upgrade Company Lease, the land identified in RTA sketch plan SR 248 as contained in Exhibit D5; and
- (b) after execution of the Stage 1 M2 Upgrade Company Lease, the land the subject of the Stage 1 M2 Upgrade Company Lease.

**Stage 3 M2 Upgrade Company Land** is:

- (a) before execution of the Stage 3 M2 Upgrade Company Lease, the land identified in RTA sketch plan SR 193, deposited plan 1153472, RTA sketch plan SR 235, RTA sketch plan SR 236 and RTA sketch plan SR 251 each as contained in Exhibit D5; and
- (b) after execution of the Stage 3 M2 Upgrade Company Lease, the land the subject of the Stage 3 M2 Upgrade Company Lease.

**Stage 1 M2 Upgrade Company Lease** is a lease of the Stage 1 M2 Upgrade Company Land in the form of the Annexed M2 Upgrade Company Lease (but which will be completed by the RTA) which the RTA grants to the Company in accordance with clause 4A.1(a)(i) and which the RTA is obliged to prepare in accordance with clause 4A.2(a)(i).

**Stage 3 M2 Upgrade Company Lease** is a lease of the Stage 3 M2 Upgrade Company Land in the form of the Annexed M2 Upgrade Company Lease (but which will be completed by the RTA) which the RTA grants to the Company in accordance with clause 4A.1(a)(i) and which the RTA is obliged to prepare in accordance with clause 4A.2(c)(i).

**Stage 2 M2 Upgrade Trust Concurrent Lease** is a concurrent lease of the Stage 2 M2 Upgrade Company Land in the form of the Annexed M2 Upgrade Trust Concurrent Lease (but which will be completed by the RTA, including completion of Schedule A and Schedule B to it) which the RTA grants the Trustee under clause 4A.1(b) and which the RTA is obliged to prepare in accordance with clause 4A.2(b)(iii).

**Stage 3 M2 Upgrade Trust Concurrent Lease** is a concurrent lease of the Stage 3 M2 Upgrade Company Land in the form of the Annexed M2 Upgrade Trust Concurrent Lease (but which will be completed by the RTA, including completion of Schedule A and Schedule B to it) which the RTA grants the Trustee under clause 4A.1(b) and which the RTA is obliged to prepare in accordance with clause 4A.2(c)(iii).

**Stage 2 M2 Upgrade Trust Land** is:

- (a) before execution of the Stage 2 M2 Upgrade Trust Lease, the land identified in RTA sketch plan SR 252 contained in Exhibit D5; and
- (b) after execution of the Stage 2 M2 Upgrade Trust Lease, the land the subject of the Stage 2 M2 Upgrade Trust Lease.

**Stage 3 M2 Upgrade Trust Land** is:



- (a) before execution of the Stage 3 M2 Upgrade Trust Lease, the land identified as the area (limited in stratum for the widened part of the bridge structure) in the place M2 UPGRADE MOTSITE 8 as contained in Exhibit D5; and
- (b) after execution of the Stage 3 M2 Upgrade Trust Lease, the land the subject of the Stage 3 M2 Upgrade Trust Lease.

**Stage 2 M2 Upgrade Trust Lease** is a lease of the Stage 2 M2 Upgrade Trust Land in the form of the Annexed M2 Upgrade Trust Lease (but which will be completed by the RTA) which the RTA grants the Trust in accordance with clause 4A.1(a)(iii) and which the RTA is obliged to prepare in accordance with clause 4A.2(b)(ii).

**Stage 3 M2 Upgrade Trust Lease** is a lease of the Stage 3 M2 Upgrade Trust Land in the form of the Annexed M2 Upgrade Trust Lease (but which will be completed by the RTA) which the RTA grants the Trust in accordance with clause 4A.1(a)(iii) and which the RTA is obliged to prepare in accordance with clause 4A.2(c)(ii).

**Stapled** means, in relation to a share in a company or unit in a trust being linked to another share in a company or unit in a trust, that the share or unit may not be dealt with (including transferred, sold or otherwise disposed of) without dealing with the other share or unit in the same manner.

**Stapled Entity** means two or more Entities whose shares or units are Stapled.

**Sublease** is the sublease of the Trust Land which the Trustee must grant the Company in accordance with clause 4.7.

**Term** is:

- (a) in respect of the definitions of Early Termination Amount, Equity Return, Material Adverse Effect, Notional Initial Investor, and clauses 2.1(g), 2.1(h), 2.1(i), 6.2(c) and 14.6, and only in respect of the period from the Satisfaction Date until the M2 Upgrade Date of Final Completion, the period which begins on the M2 Motorway Commencement Date and ends on the day 49 years after that date; and otherwise
- (b) the period which begins on the M2 Motorway Commencement Date and ends on the day the Term ends under the Company Lease, the Trust Lease and the Trust Concurrent Lease.

**Third Refinancing Deed** means the deed entitled "Third Refinancing Deed" dated 1 May 2009 between the Trustee, the Company, Hills Construction, National Australia Bank Limited, each Existing Participant (as defined therein), each New Participant (as defined therein), each Existing Hedge Counterparty (as defined therein) and each New Hedge Counterparty (as defined therein).

**Toll Calculation Schedule** is schedule 2.

**Transurban Entity** means each of:

- (a) Transurban International;
- (b) Transurban Holdings;

- (c) Transurban Holding Trustee; and
- (d) a Related Body Corporate of any of the entities referred to in paragraphs (a), (b) or (c) (other than the Company, the Trustee or Hills Construction).

**Transurban Holdings** means Transurban Holdings Limited ABN 86 098 143 429.

**Transurban Holding Trust** means the Transurban Holding Trust ARSN 098 807 419 constituted by the Transurban Holding Trust Constitution dated 15 November 2001 (as amended from time to time).

**Transurban Holding Trustee** means Transurban Infrastructure Management Limited ABN 27 098 147 678 as responsible entity of the Transurban Holding Trust.

**Transurban International** means Transurban International Limited ARBN 121 746 825.

**Transurban Stapled Securities** means the following Stapled securities:

- (a) shares in Transurban Holdings; and
- (b) units in the Transurban Holding Trust.

**Trust** is The Hills Motorway Trust, constituted under the Trust Deed.

**Trust Concurrent Lease** is the concurrent lease of the Company Land which the RTA must grant the Trustee under clause 4.1(b).

**Trust Deed** is The Hills Motorway Trust Deed, dated on 18 August 1994 between Perpetual (as trustee of the Trust) and the Manager, as replaced by the Constitution.

**Trust Land** is:

- (a) before the execution of the Trust Lease, the land identified as Trust Land in the Plan of the Land; and
- (b) after the execution of the Trust Lease, the Trust Land defined in the Trust Lease.

**Trust Lease** is the lease of the Trust Land which the RTA must grant the Trust in accordance with clause 4.1.

**Trust Road** is the permanent works to be designed and constructed on the Trust Land in accordance with this deed.

**Unstapled** means, in relation to a share in a company or unit in a trust that is Stapled, the share in the company or the unit in the trust ceases to be Stapled.

## 1.2 Law of the contract

The law of the contract is New South Wales law.

## 1.3 References

- (a) References to clauses, schedules and exhibits refer to them in and to this deed.

- (b) A reference to this deed includes all exhibits to this deed.
- (c) A reference to including, includes or include must be read as if it is followed by (without limitation).
- (d) A reference to a business day is to a day on which trading banks are open for business in Sydney.
- (e) A reference to a court is to an Australian court.
- (f) A reference to a quarter is to a calendar quarter.
- (g) A reference to Investors (treated as if those Investors were all Notional Initial Investors) must be read as a reference to one Investor who is deemed to hold the aggregate number of:
  - (i) shares in the Company and units in the Trust issued under the Equity Information Memorandum; and
  - (ii) M2 Upgrade Project Securities pursuant to the Equity Subscription Deed in the ratio 155:185,

on the basis that one share in the Company is Stapled to one unit in the Trust and that, in relation to the M2 Upgrade Project Securities, the aggregate cost of the investment in M2 Upgrade Project Securities cannot exceed \$275 million less the Advance Contribution.

- (h) A reference herein to this deed or to any other deed, agreement, document or instrument includes, respectively, this deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time.

#### 1.4 No joint venture

Nothing in any Project Document constitutes a joint venture, partnership or fiduciary relationship between the RTA, the Minister, the Trustee and the Company or any of them.

#### 1.5 Trustee and Company obligations

- (a) Subject to this deed, the RTA Representative is not obliged to comment on any documentation or information which the Trustee or the Company gives it in respect of the Project.
- (b) The only people authorised to approve any documentation or information which the Trustee or the Company gives the RTA in respect of the Project are:
  - (i) the Chief Executive of the RTA; or
  - (ii) a delegate authorised in writing by the Chief Executive of the RTA from time to time.
- (c) Subject to clause 1.5(b), no representation or approval by any officer or employee of the RTA in respect of the Trustee's or the Company's obligations under the Project Documents lessens or otherwise affects the Trustee's or the Company's obligations

under the Project Documents to ensure that the total design and construction of the M2 Motorway satisfy the requirements of the Project Documents.

**1.6 RTA's position as an authority**

- (a) Subject to clause 1.6(b), the Project Documents do not unlawfully restrict or otherwise affect the RTA's unfettered discretion to use its statutory powers.
- (b) The RTA and the Minister acknowledge that clause 1.6(a) does not limit:
  - (i) the RTA's and the Minister's obligations under this deed; or
  - (ii) the RTA's and the Minister's liabilities to compensate the Trustee and the Company for breach of this deed by the RTA or the Minister.

**1.7 RTA consent**

Subject to this deed, if the Company or the Trustee requires the RTA's consent under a Project Document, the RTA must not unreasonably withhold or delay that consent.

**1.8 Trustee's obligations and change of Trustee**

- (a) The Trustee acknowledges that:
  - (i) subject to clause 1.8A, it is liable to perform the obligations imposed on it under this deed; and
  - (ii) clause 1.8(b) does not lessen or otherwise affect the Trustee's obligations under this deed.
- (b) The parties (other than the Trustee) acknowledge that:
  - (i) the Trustee is a party to this deed as the trustee of the Trust pursuant to the Trust Deed;
  - (ii) the Trustee will perform or procure the performance of all of the obligations imposed on it under this deed;
  - (iii) the Trustee is responsible for the management and operations of the Trust; and
  - (iv) clause 1.8A applies to any action which any party (other than the Trustee) to this deed brings against the Trustee if the Trustee fails to perform any of its obligations under this deed, and which results in a breach of clause 1.8(a) by the Trustee.
- (c) The Trustee must not voluntarily cease to be the trustee of the Trust unless a replacement trustee is appointed with the RTA's prior written consent.

**1.8A Trustee's capacity**

- (a) The Trustee enters into this deed in its capacity as trustee of the Trust and in no other capacity. Subject to clause 1.8A(f) the parties (other than the Trustee) acknowledge that the Trustee's obligations under this deed are incurred by the Trustee solely in its capacity as trustee of the Trust.

- (b) Subject to clause 1.8A(f), the Trustee will be liable to pay or satisfy any obligations under this deed only out of the assets of the Trust out of which the Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (c) Subject to clause 1.8A(f), the parties (other than the Trustee) may enforce their rights against the Trustee arising from non-performance of the Trustee's obligations under this deed only to the extent of the Trustee's right of indemnity out of the assets of the Trust.
- (d) Subject to clause 1.8A(f), if any party (other than the Trustee) to this deed does not recover all money owing to it arising from non-performance of the Trustee's obligations under this deed by enforcing the rights referred to in clause 1.8A(c), it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee wound up or proving in the winding up of the Trustee unless another creditor has initiated proceedings to wind up the Trustee.
- (e) Subject to clause 1.8A(f), the parties (other than the Trustee) waive their rights, and release the Trustee from any personal liability whatsoever, in respect of any loss or damage:
  - (i) which they may suffer as a result of any:
    - (A) breach by the Trustee of its duties under this deed; and
    - (B) non-performance by the Trustee of its obligations under the Project Documents; and
  - (ii) which cannot be paid or satisfied out of the assets of the Trust out of which the Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (f) The limitations in clauses 1.8A(a) to 1.8A(e) will not apply in the case of fraud, negligence or breach of trust on the part of the Trustee or a failure on the part of the Trustee to perform its duties properly within the meaning of section 601GA(2) of the Corporations Law in each case, in its capacity as trustee of the Trust.
- (g) This clause does not limit or affect in any way the enforcement of the Security Documents or any Security Interest.

#### 1.9 **Contra proferentem**

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that it put forward this deed or any part of it.

#### 1.10 **Discontinuance of bodies or associations**

- (a) If an authority, institution, association or body referred to in this deed is reconstituted, renamed or replaced, or if its powers or functions are transferred to another organisation, this deed refers to that new organisation.

- (b) If an authority, institution, association or body referred to in this deed ceases to exist, this deed refers to the organisation which serves the same purpose or object as that authority, institution, association or body.

#### 1.11 Condition precedent

It is a condition precedent to the obligations of the parties that:

- (a) the RTA, the Company and Perpetual (as trustee of the Trust) execute the Deed of Charge; and
- (b) the RTA makes a recommendation to the Minister that, in accordance with section 63 of the Roads Act 1993 (NSW), he direct that the functions of any roads authority in respect of the M2 Motorway (as defined immediately prior to the Satisfaction Date) are the responsibility of the RTA; and
- (c) the Minister makes the direction referred to in clause 1.11(b); and
- (d) the RTA receives evidence in form and substance satisfactory to it, that the Project Facilities Agreement is executed and immediately binding on the parties; and
- (e) the Minister recommends, and the Treasurer approves, the RTA entering into the Project Documents (as defined immediately prior to the Satisfaction Date) in accordance with section 20(1) of the Public Authorities (Financial Arrangements) Act 1987 (NSW); and
- (f) the Minister executes a guarantee under section 22B of the Public Authorities (Financial Arrangements) Act 1987 (NSW), which is satisfactory to the Trustee and the Company in form and substance, in respect of the RTA's obligations under the Project Documents (as defined immediately prior to the Satisfaction Date); and
- (g) the Project Management Services Deed is executed and immediately binding on the parties.

#### 1.12 Several obligations

- (a) The rights and obligations of the Company and the Trustee under the Project Documents are several.
- (b) A reference to a Company and Trustee obligation is:
  - (i) a several reference to the Trustee in relation to the Trust Road, the Trust Land, the Trust Lease, the Trust Concurrent Lease, the M2 Upgrade Trust Land, each M2 Upgrade Trust Lease and each M2 Upgrade Trust Concurrent Lease; and
  - (ii) a several reference to the Company in relation to the Company Road, the Company Land, the Company Lease, the M2 Upgrade Company Land and each M2 Upgrade Company Lease.

#### 1.13 Equity Return

For the purposes of calculating:

- (a) whether the Company and the Trustee have received an amount sufficient to give Investors (treated as if those Investors were all Notional Initial Investors) a particular internal rate of return;
- (b) the amount necessary to enable the Company and the Trustee to give Investors (treated as if those Investors were all Notional Initial Investors) a particular internal rate of return; and
- (c) Equity Return,

the Advance Contribution (which was used by the Company and the Trustee to fund costs relating to the M2 Upgrade before the Satisfaction Date rather than for the purposes of making distributions) will not be counted as an investment by Notional Initial Investors or a distribution to them.

## **2. PROJECT PARAMETERS**

### **2.1 Policy and intent**

- (a) It is the New South Wales government's policy to increase private sector participation in the provision of essential infrastructure, including the New South Wales roads system. The objectives of this policy are to:
  - (i) enhance and modernise the public infrastructure of New South Wales for the benefit of the people of New South Wales;
  - (ii) safeguard the public interest in infrastructure projects in which the private sector participates;
  - (iii) procure that that infrastructure is available to the public at the least cost to the government;
  - (iv) increase efficiencies in the operation of that infrastructure; and
  - (v) provide sound opportunities for private sector investment.
- (b) The parties' intention in entering into the Project Documents is to provide the M2 Motorway as an integrated part of the essential public transport infrastructure of New South Wales to meet the policy objectives set out in clause 2.1(a):
  - (i) more quickly than would otherwise be economically feasible for the government;
  - (ii) with the aim that the financing, design, construction, maintenance and operation of the M2 Motorway as a privately financed facility will be funded from:
    - (A) the Project Debt;
    - (B) equity subscribed to the Company and the Trust by the Investors;
    - (C) tolls paid by M2 Motorway users; and

- (D) other sources contemplated by the Project Documents and the M2 Upgrade Documents,
- for the purpose (among others) of providing the Investors with a return on their investment in accordance with the terms of this deed; and
- (iii) on a basis which will assist the Trustee's ability to repay the Project Debt in accordance with the terms of the Debt Documentation.
- (c) The parties acknowledge that:
- (i) under the Project Documents and the M2 Upgrade Documents:
- (A) the Company and the Trustee are required to assume certain risks relating to the cost of the Project; and
- (B) the Company is required to assume certain risks relating to the revenue generated by the Project including the risk that the traffic projections in the Base Case Model will not be met;
- (ii) the Company and the Trustee are not required to assume all the risks relevant to the cost of the Project and the revenue generated by the Project; and
- (iii) if an event referred to in clause 2.1(c)(iii) occurs the intent of this deed requires the parties to take a cooperative approach to agreeing the mechanisms required to effect the results referred to in clause 2.1(g) and clause 2.1(h).
- (d) The parties agree that the following matters are capable of materially adversely affecting the Project:
- (i) the actual extension of the M2 Motorway as a tollroad or as a toll free road;
- (ii) the M2 Motorway Commencement Date (as defined in this deed immediately prior to the Satisfaction Date) occurring after 30 December 1997, despite the Company, the Trustee and their contractors taking all reasonable measures including acceleration measures to achieve the M2 Motorway Commencement Date by 30 December 1997, due to the occurrence or discovery of an event or circumstance:
- (A) which is beyond the control of the Company, the Trustee and their contractors; and
- (B) the risk of which is not otherwise specifically allocated in the Project Documents;
- (iii) the occurrence of a Force Majeure Event after the M2 Motorway Commencement Date;
- (iv) the New South Wales government (or any of its authorities or agencies):
- (A) developing, substantially upgrading or granting a concession to develop or substantially upgrade; or



- (B) permitting the development of, or substantial upgrading of, or the grant of a concession to develop or substantially upgrade,  
an Alternative Road;
- (v) the New South Wales government (or any of its authorities or agencies) taking actions relating to the servicing of the transport requirements of the Northwest Regions of Sydney (other than a matter falling within the terms of clause 2.1(d)(iv) or the introduction of the North West Rail Link), which:
  - (A) discriminates against the Company in the operation or maintenance of the M2 Motorway (other than a matter falling within the terms of clause 2.16); or
  - (B) prejudices the operational results of the M2 Motorway;
- (vi) an increase in the cost of performance of the Company's and the Trustee's obligations under this deed, the Company Lease, the Trust Lease and the Trust Concurrent Lease beyond that reasonably anticipated at the time of entering into this deed, or, an increase in the cost of performance of the Company's and Trustee's obligations under any M2 Upgrade Company Lease, any M2 Upgrade Trust Lease and any M2 Upgrade Trust Concurrent Lease, beyond that reasonably anticipated at the time of entering into the M2 Upgrade Project Deed due to:
  - (A) subject to clause 2.16, a change in:
    - (I) New South Wales or local government legislation including regulations or by-laws;
    - (II) New South Wales Authority requirements; or
    - (III) New South Wales government, local government or State Authority guidelines with which the Company and the Trustee are legally required to comply;
  - (B) a change in the application of the existing lawful requirements of a New South Wales Authority; or
  - (C) a court handing down a Final Determination which changes the judicial interpretation of existing New South Wales legislation;
- (vii) an increase in the cost of performance of the Company's and the Trustee's obligations under this deed, the Company Lease, the Trust Lease and the Trust Concurrent Lease beyond that reasonably anticipated at the time of entering into this deed, or an increase in the cost of performance of the Company's and Trustee's obligations under any M2 Upgrade Company Lease, any M2 Upgrade Trust Lease and any M2 Upgrade Trust Concurrent Lease, beyond that reasonably anticipated at the time of entering into the M2 Upgrade Project Deed due to:
  - (A) a change in:

- (I) Commonwealth government legislation including regulations or by-laws;
  - (II) Commonwealth Authority requirements; or
  - (III) Commonwealth government or Commonwealth Authority guidelines with which the Company and the Trustee are legally required to comply;
- (B) a change in the application of the existing lawful requirements of a Commonwealth Authority; or
- (C) a court handing down a Final Determination which changes the judicial interpretation of existing Commonwealth legislation,
- except in respect of income taxation; and
- (viii) a court issuing an injunction which:
- (A) prevents the Company or the Trustee constructing the M2 Motorway (excluding the M2 Upgrade); or
  - (B) prevents the Company:
    - (I) operating, maintaining or repairing the M2 Motorway; or
    - (II) levying or keeping tolls from the M2 Motorway,in the manner contemplated by the Project Documents (except where the injunction is issued as a result of a wrongful act or default by the Trustee or the Company under the Project Documents, or by their contractors).
- (e) If the Company and the Trustee reasonably consider that an event referred to in clause 2.1(d)(i), clause 2.1(d)(iv), clause 2.1(d)(vi) or clause 2.1(d)(viii) has had a Material Adverse Effect on the Project:
- (i) the Company and the Trustee may give the RTA notice of that fact, including full details of the effect of that event on the Project; and
  - (ii) as soon as practicable, but not later than 14 days after the RTA receives a notice under clause 2.1(e)(i), the RTA or the Minister must enter into negotiations with the Company, the Trustee and their financiers in accordance with clause 2.1(g) and clause 2.1(i).
- (f) If the Company and the Trustee reasonably consider that an event referred to in clause 2.1(d)(ii), clause 2.1(d)(iii), clause 2.1(d)(v)(B) or clause 2.1(d)(vii) has had a Material Adverse Effect on the Project:
- (i) the Company and the Trustee may give the RTA notice of that fact, including full details of the effect of that event on the Project; and
  - (ii) as soon as practicable, but not later than 14 days after the RTA receives a notice under clause 2.1(f)(i), the RTA or the Minister must enter into

negotiations with the Company and the Trustee and their financiers in accordance with 2.1(h) and clause 2.1(i).

The Company and the Trustee acknowledge that clause 2.1(f) does not apply if, after the relevant event occurs, the Equity Return exceeds the Base Case Equity Return.

- (g) The parties, in light of the intent of the Project Documents set out in clause 2.1, agree that:
- (i) in respect of events referred to in clause 2.1(d)(i), clause 2.1(d)(iv) and clause 2.1(d)(viii) they will negotiate in good faith to enable:
    - (A) the Trustee to re-pay the Project Debt within the Payback Period substantially in accordance with the terms of the Debt Documentation; and
    - (B) the Company and the Trustee in aggregate to give the Investors (treated as if those Investors were all Notional Initial Investors) the lower of:
      - (I) the Equity Return they would have received if the relevant event had not occurred; or
      - (II) the Base Case Equity Return plus three percent; and
  - (ii) in respect of an event referred to in clause 2.1(d)(vi) they will negotiate in good faith to enable:
    - (A) the Trustee to re-pay the Project Debt within the Payback Period substantially in accordance with the terms of the Debt Documentation; and
    - (B) the Company and the Trustee in aggregate to give the Investors (treated as if those Investors were all Notional Initial Investors) the Equity Return they would have received if the relevant event had not occurred.
- (h) The parties, in light of the intent of the Project Documents set out in clause 2.1, agree that, in respect of events referred to in clause 2.1(f), they will negotiate in good faith with a view to enabling:
- (i) the Trustee to have a substantially similar (but not materially lessened) ability to re-pay the Project Debt within the Payback Period; and
  - (ii) the Company and the Trustee to have a substantially similar (but not materially lessened) ability in aggregate to give the Investors (treated as if those Investors were all Notional Initial Investors) the lower of:
    - (A) the Equity Return they would have received if the relevant event had not occurred; or
    - (B) the Base Case Equity Return.
- (i) The parties acknowledge that, in any negotiations required by clause 2.1(e) or clause 2.1(f), they should each have maximum flexibility to achieve the results referred to in clause 2.1(g) and clause 2.1(h) including:

- (i) amending the Project Documents including the Toll Calculation Schedule;
  - (ii) varying the Term;
  - (iii) altering the allocation of risk between the parties as established under this deed or any other Project Document;
  - (iv) varying the parties' financial contributions to the Project (except to the extent such financial contributions relate to the design, construction and completion of the M2 Upgrade);
  - (v) waiving or releasing existing rights under this deed or any other Project Document including a right to receive a money payment;
  - (vi) requesting the providers of the Project Debt to restructure the Project financing arrangements; or
  - (vii) taking any other action they agree.
- (j) The parties acknowledge their intention that this deed should be interpreted in a way which reflects and furthers their mutual interest in the success of the Project.
- (k) Subject to clause 1.6, the Minister and the RTA must exercise their rights and discretions under this deed and the Project Documents in a manner which promotes the mutual interests of the parties having regard to clause 2.1.
- (l) Where an event referred to in clause 2.1(c)(iii) is also an event described in clause 17.1(a) to (d) of Annexure A to the M2 Upgrade Project Deed, the parties agree to apply this clause and clause 17.1 of Annexure A to the M2 Upgrade Project Deed (the 'MAE Clauses') having regard to the following principles:
- (i) there shall be no double counting of the impact of such events in the MAE Clauses in the determination of any redress or other compensation to be provided by the RTA; and
  - (ii) there should be no reduction in the entitlements of the Company and Trustee under this deed as compared to the entitlements that existed immediately prior to the entry into of the M2 Upgrade Project Deed.

## 2.2 The Company's and the Trustee's fundamental obligations

- (a) The Trustee must:
- (i) finance, design and construct the Trust Road (and the Ancillary Works relating to it); and
  - (ii) grant the Sublease to the Company,
- in accordance with this deed.
- (b) The Company must:
- (i) finance, design and construct the Company Road (and the Ancillary Works relating to it); and

- (ii) operate, maintain and repair the M2 Motorway,  
in accordance with this deed.

### 2.3 The Company's and the Trustee's assumption of risk

- (a) Subject to this deed, the other Project Documents and the M2 Upgrade Documents:
  - (i) the Company and the Trustee accept all risks of the Project including the risk that the actual cost of the Project is greater than the estimated cost of the Project; and
  - (ii) the Company accepts the risk that:
    - (A) the actual revenue the Company derives from the M2 Motorway (including revenue the Company derives from Signs and service centres referred to in clause 8.7) is less than the estimated revenue of the Project; and
    - (B) the actual traffic volume on the M2 Motorway is less than the estimated traffic volume of the Project.
- (b) Subject to clause 2.1 and clause 17 of Annexure A to the M2 Upgrade Project Deed, the RTA is not liable on any account (including under clause 14.5 or clause 14.6) for any damage, expense, loss or liability which the Company, the Trustee or an Investor suffers or incurs in respect of the incorrectness or inaccuracy of any assumption made in the calculation of the Base Case Model or any assumption made in the calculation of the Base Case Equity Return or the Equity Return or elsewhere relating to:
  - (i) taxation;
  - (ii) the availability of taxation rulings;
  - (iii) traffic volume;
  - (iv) Project revenue; or
  - (v) the costs of designing, constructing, financing, operating, maintaining and repairing the M2 Motorway,

except where that incorrectness or inaccuracy is due to a breach of this deed or the M2 Upgrade Project Deed by the RTA.

### 2.4 No representation concerning traffic

- (a) Neither the RTA nor the Minister makes any representation or gives any warranty in respect of M2 Motorway traffic usage.
- (b) The RTA's and the Minister's promise in clause 2.10(a)(v) in respect of the Environmental Impact Determination is not a representation or warranty in respect of M2 Motorway traffic usage.

## 2.5 Management of traffic system and maintenance of alternative roads

- (a) The RTA undertakes to manage the Sydney metropolitan traffic system so as to recognise:
  - (i) the position of the M2 Motorway as the principal arterial road servicing the Northwest Regions of Sydney;
  - (ii) the importance of the Epping Road/Gore Hill freeway link in the traffic system and the importance of ensuring the free flow of traffic along that link; and
  - (iii) the importance of other roads which connect to the M2 Motorway and:
    - (A) the timely maintenance of those roads; and
    - (B) ensuring the free flow of traffic along those roads.
- (b) The RTA, consistent with its position as an authority acknowledged in clause 1.6, may maintain and repair the New South Wales roads system including Alternative Roads. If that maintenance or repair involves an upgrading of those roads the RTA must have regard to the fact that the M2 Motorway is the principal arterial road servicing the Northwest Regions of Sydney.

## 2.6 Extension of M2 Motorway

- (a) The RTA must consult with the Company in good faith in respect of any proposed extension of the M2 Motorway as a tollroad, or as a toll free road, and must have regard to the effect on the M2 Motorway of that extension, including the effect on the traffic usage of the M2 Motorway.
- (b) The Company acknowledges that clause 2.6(a) does not affect the RTA's ability to engage in a competitive tendering or other process in respect of any proposed extension of the M2 Motorway as a tollroad or as a toll free road.

## 2.7 [Not used]

## 2.8 Connecting roads

- (a) The Company acknowledges that, consistent with the RTA's position as an authority referred to in clause 1.6(a), the RTA may (at its cost) connect other roads to the M2 Motorway, on the basis that:
  - (i) no untolled use of the M2 Motorway will result from connecting roads; and
  - (ii) the Company may levy tolls on vehicles from connecting roads which:
    - (A) are calculated to yield an economic rate of return to the Company and not merely calculated on a cost recovery basis; and
    - (B) do not exceed the toll charged at the main toll plaza in accordance with this deed.
- (b) If the RTA proposes to connect other roads to the M2 Motorway, it must give the Company reasonable notice of that fact and must co-operate with the Company to

minimise the impact of that connection on the operation and use of the M2 Motorway.

- (c) If the RTA decides to connect another road to the M2 Motorway:
  - (i) the Company and the Trustee must give the RTA sufficient access to the Land, the M2 Motorway and the Ancillary Works, to enable that connection to be made; and
  - (ii) the RTA must co-ordinate all activities associated with the connection and must not unreasonably interfere with the operation and use of the M2 Motorway.

## 2.9 Compliance with Law

- (a) The Company and the Trustee must comply with all Law applicable to their respective obligations in respect of the Project, including obtaining all necessary Authority consents in respect of the service centres referred to in clause 8.7.
- (b) Subject to clause 2.9(a), the RTA and the Minister must use their best endeavours to expedite the Company and the Trustee obtaining any Authority consents and approvals which they require in accordance with the Project Program.

## 2.10 Warranties and Trustee undertaking

- (a) The RTA and the Minister warrant that:
  - (i) the RTA has the power to execute, deliver and perform its obligations under the Project Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
  - (ii) the Project Documents are the RTA's valid and legally binding obligations enforceable against the RTA in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
  - (iii) the execution, delivery and performance of the Project Documents will not contravene any Law to which the RTA is subject;
  - (iv) the Company is entitled by Law to levy and keep tolls from M2 Motorway users as contemplated by the Project Documents;
  - (v) the Environmental Impact Determination complies with all applicable Law and is valid, proper and adequate for the design, construction, operation, maintenance and repair of the M2 Motorway (excluding the M2 Upgrade);
  - (vi) subject to the Project Documents, they will not do anything to prevent the Company or the Trustee from performing their obligations or exercising their rights under the Project Documents;
  - (vii) the Company and the Trustee are entitled to modify the traffic flow and to divert and control traffic flow on existing roadways in accordance with clause 7.8;

- (viii) the Scope of Works and Technical Criteria (as defined immediately prior to the Satisfaction Date) are not inconsistent with the Environmental Impact Determination; and
  - (ix) the rezoning of the areas referred to in clause 4.5 of Part 8 of the Environmental Impact Assessment Report referred to in the Environmental Impact Determination has occurred.
- (b) The Minister warrants that:
- (i) the Minister has the power to execute, deliver and perform his obligations under the Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) the Project Documents are the Minister's valid and legally binding obligations enforceable against the Minister in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights; and
  - (iii) the execution, delivery and performance of the Project Documents will not contravene any Law to which the Minister is subject.
- (c) Each of the Company and the Trustee warrants that:
- (i) it has the power to execute, deliver and perform its obligations under the Project Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
  - (ii) the Project Documents are the Company's and the Trustee's valid and legally binding obligations enforceable against the Company and the Trustee in accordance with their terms subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
  - (iii) the execution, delivery and performance of the Project Documents will not contravene any Law to which the Company or the Trustee is subject, or any agreement or arrangement binding on the Company or the Trustee;
  - (iv) the Trust is properly constituted; and
  - (v) the Trustee is authorised under the Trust Deed to hold the property of the Trust in its name and to perform its obligations under the Project Documents.
- (d) The Trustee must ensure that:
- (i) the Trustee's rights of indemnity and subrogation in respect of the assets of the Trust (whether or not arising under the Trust Deed) are not modified, released or diminished in any way; and
  - (ii) the Trustee's lien over any property of the Trust has priority over the rights of the beneficiaries of the Trust.

## 2.11 Business of the Company and the Trustee

- (a) The Company must not:



- (i) carry on any business other than the Project or a service centre referred to in clause 8.7;
  - (ii) acquire or hold any property or incur any liabilities other than for the purposes of the Project or a service centre referred to in clause 8.7; or
  - (iii) incorporate or acquire any subsidiary (other than Hills Construction),
- without the RTA's prior written consent.
- (b) The Trustee must not carry on any business other than the Project, acquire or hold any property or incur any liabilities other than for the purposes of the Project or in the administration of the Trust.

#### 2.11A Ring Fencing

- (a) Subject to clause 2.11A(b), the Company and the Trustee must not without the RTA's consent enter into any transactions or arrangements, which includes any amendment, variation (including a variation to or under a transaction or arrangement and including a variation or expansion or contraction of a service) or waiver of a provision under any transaction or arrangement, with any Transurban Entity which are:

- (i) not on an arms length and commercial basis; or
- (ii) unnecessary for, or of a scale and nature beyond that required for, the efficient and effective carrying out of the obligations of the Company or Trustee under the Project Documents,

provided that whether a particular transaction or arrangement is on an arms length and commercial basis must be determined objectively having regard to:

- (iii) whether the Company and Trustee would have entered into the transaction or arrangement if they were:
  - (A) unrelated to the Transurban Entity;
  - (B) free from undue influence or pressure by the Transurban Entity;
  - (C) through their relevant decision-makers, sufficiently knowledgeable about the circumstances of the transaction or arrangement, sufficiently experienced in business and sufficiently well advised to be able to form a sound judgment as to what is in their interests; and
  - (D) concerned only to achieve the best available commercial result for themselves in all of the circumstances;
- (iv) whether the Company and Trustee acted with the interests of any Transurban Entity in mind;

- (v) whether the Company and Trustee on the one hand and the Transurban Entity on the other hand dealt with each other as arms length parties would normally do, so that the outcome of their dealing is a matter of real bargaining; and
  - (vi) whether the transaction or arrangement represents an equivalent or better commercial outcome for the Company and Trustee than would be available from an entity other than the Transurban Entity
- (b) If an emergency situation occurs in connection with the M2 Motorway and a transaction or arrangement (within the meaning of clause 2.11A(a)) with a Transurban Entity is urgently required to:
- (i) provide access to emergency services or emergency traffic control;
  - (ii) prevent any occurrence that is likely to cause damage to the M2 Motorway, or compromise the safety of any person; or
  - (iii) address significant unforeseen congestion on the M2 Motorway,
- and there is not already a transaction or arrangement (within the meaning of clause 2.11A(a)) in place in accordance with the Project Documents to respond to or remedy such an emergency situation, then the Company and the Trustee may without the RTA's consent enter into the relevant transaction or arrangement for a period not exceeding 24 hours duration after the time that the relevant emergency situation commences, provided that the Company and the Trustee must:
- (iv) immediately notify the RTA of the relevant transaction or arrangement and the emergency situation to which it relates and provide such details and information regarding the relevant transaction or arrangement as may reasonably be requested by the RTA; and
  - (v) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, demonstrate to the reasonable satisfaction of the RTA that the relevant transaction or arrangement:
    - (A) was the best commercial outcome available in the circumstances; and
    - (B) does not result in a lesser commercial outcome for the Company and the Trustee than would be available from an entity other than the Transurban Entity; and
    - (C) was free from undue influence or pressure by the Transurban Entity and was not entered into with the interests of the Transurban Entity in mind; and

- (D) was necessary for, and was not of a scale or nature beyond what was required to respond to or remedy the relevant emergency situation; and
- (vi) as soon as reasonably practicable after entering into the relevant transaction or arrangement and in any event no later than 7 days after the commencement of the relevant emergency situation, provide such details, documents and information in connection with the relevant transaction or arrangement as may reasonably be requested by the RTA including, without limitation:
  - (A) information and records of the Company and the Trustee in connection with all procurement processes relating to the relevant transaction or arrangement; and
  - (B) the steps taken by the Company and the Trustee to ensure that there are appropriate processes in place to respond to or remedy any continuation or recurrence of the emergency situation; and
- (vii) at the end of the quarter in which the relevant transaction or arrangement was entered into, provide a written report to the RTA setting out the aggregate expenditure, commitment or forgiveness required or provided under the relevant transaction or arrangement; and
- (viii) ensure that the aggregate expenditure, commitment or forgiveness required or provided under the relevant transaction or arrangement is reported in the next occurring half-yearly financial reports for the Company and the Trustee.
- (c) The Trust must not become a member of any tax consolidated group, as contemplated by Part 3-90 of the Income Tax Assessment Act 1997, including that of which Transurban Holdings is the head entity, without RTA's consent.
- (d) While the Company is a member of a tax consolidated group, the Company:
  - (i) must enter into a tax sharing agreement and tax funding agreement (within the meaning of these terms in the Part 3-90 of the Income Tax Assessment Act 1997) for the consolidated group on terms reasonably acceptable to RTA; and
  - (ii) must not amend, vary or terminate the tax sharing agreement and tax funding agreement referred to in clause 2.11A(d)(i) in a way that may directly or indirectly lead to an impact to the Company without RTA's consent. The following changes will not be considered an amendment, variation or a termination for the purposes of this clause 2.11(A)(d)(ii):
    - (A) any additions or deletions to the entities party to the tax sharing agreement and tax funding agreement (other than the deletion of the Company); and/or

- (B) changes to the tax funding agreement to ensure that it precludes the need for recognition of contributions by or distributions to Transurban Holdings under the accounting standards as a consequence of any group liability (within the meaning of Division 721 of the Income Tax Assessment Act 1997).

## 2.12 RTA undertakings

- (a) The RTA must:
  - (i) make the recommendation referred to in clause 1.11(b) within seven days of 26 August 1994; and
  - (ii) use its best endeavours to cause the event referred to in clause 1.11(c) to occur.
- (b) The RTA and the Minister must ensure that:
  - (i) the Minister's declaration of the M2 Motorway and the M2 Upgrade as a tollway under section 52 of the Roads Act 1993 (NSW);
  - (ii) the direction referred to in clause 1.11(b); and
  - (iii) the direction referred to in clause 6A(b) of the M2 Upgrade Project Deed,are effective from the date they are made until the end of the Term.
- (c) The RTA and the Minister must promptly take action, or procure that the relevant authorities take action, to remove any road blockade or other form of civil disobedience which hinders or prevents unfettered access to or along the M2 Motorway or the Land by the public, the Company, the Trustee and their contractors.

## 2.13 Disclaimer

The Company and the Trustee acknowledge that, subject to the Project Documents and the M2 Upgrade Documents, the RTA and the Minister have not:

- (a) made any representation;
- (b) given any information or advice; or
- (c) given any warranty,

of any kind in respect of any information or data supplied or made available by the RTA to the Company or the Trustee, including any Design Documentation, the Environmental Impact Statement, the Project Approval, reports or any other information or data, in respect of the Project.

## 2.14 Services

- (a) The Company or the Trustee must obtain (at their cost) any Services they need to perform their obligations under the Project Documents.
- (b) The Company and the Trustee must pay for all Services in respect of the Project.

- (c) The Company and the Trustee must relocate or adjust Services (at their cost) in accordance with the Scope of Works and Technical Criteria.
- (d) The RTA must use its reasonable endeavours to facilitate the relocation or adjustment of Services in respect of the Project.

**2.15 Contractual pattern for Project delivery**

- (a) The Company and the Trustee must:
  - (i) contract in accordance with the contractual pattern for Project delivery in the Contracts Schedule; and
  - (ii) not alter that contractual pattern in any material respect without the prior written consent of the RTA.
- (b) Subject to clause 2.15(a), the Company and the Trustee may subcontract the performance of their obligations under this deed.
- (c) The RTA acknowledges that:
  - (i) the Company will subcontract certain of its obligations to operate, maintain and repair the M2 Motorway under this deed to the Operator;
  - (ii) [not used]
  - (iii) [not used]
- (d) The Company and the Trustee must give the RTA a copy of:
  - (i) the Debt Documentation;
  - (ii) any other contracts and security documentation relating to the financing of the Project; and
  - (iii) the Completion Undertaking,as soon as practicable after they are executed.
- (e) The Company must ensure that (except with the prior written consent of the RTA) no Entity other than a Holding Vehicle:
  - (i) is or becomes a holder of shares in the Company;
  - (ii) has or acquires a beneficial interest in shares in the Company; or
  - (iii) has or acquires a relevant interest (within the meaning of section 608 of the Corporations Act) in shares in the Company, other than as a result of having a relevant interest (within the meaning of the Corporations Act) in securities issued by a Holding Vehicle.
- (f) The Trustee must ensure that (except with the prior written consent of the RTA) no Entity other than a Holding Vehicle:

- (i) is or becomes a holder of units in the Trust;
  - (ii) has or acquires a beneficial interest in units in the Trust, other than as a result of holding a legal or beneficial interest in an interest (within the meaning of the Corporations Act) in the Transurban Holding Trustee; or
  - (iii) has or acquires a relevant interest (within the meaning of section 608 of the Corporations Act) in units in the Trust, other than as a result of having a relevant interest (within the meaning of the Corporations Act) in securities issued by a Holding Vehicle.
- (g) The Company and the Trustee must procure that, where the Holding Vehicle of the Company and Trust is a Stapled Entity, the securities of the Holding Vehicle must not be Unstapled unless:
- (i) all of the securities of the Holding Vehicle are held either by a single Entity or by a Stapled Entity; or
  - (ii) the Company or the Trustee have obtained the RTA's prior written consent.

#### 2.16 Discriminatory levies

If the New South Wales government imposes a rate, tax, levy, charge or other requirement on:

- (a) the Company, the Trustee or the Operator;
- (b) the M2 Motorway;
- (c) the Land; or
- (d) tolls or any other amounts payable under the Project Documents,

which, by the manner in which it is imposed, discriminates against:

- (e) the Company in the operation, maintenance or repair of the M2 Motorway;
- (f) the Company, in the design or construction of the Company Road, or the Trustee, in the design or construction of the Trust Road;
- (g) the Operator, in the operation, maintenance or repair of the M2 Motorway; or
- (h) private operators of tollroads generally (including the Company and the Operator),

the RTA must reimburse the Company or the Trustee (as applicable) the increased cost to the Company or the Trustee of paying that rate, tax, levy or charge or meeting the cost of that requirement.

#### 2.17 RTA obligation to design and construct

- (a) The RTA must design and construct the works identified in schedule 2 of the Scope of Works and Technical Criteria in accordance with the Scope of Works and Technical Criteria (as defined immediately prior to the Satisfaction Date).

- (b) The Company and the Trustee acknowledge that:
- (i) the RTA will enter into the Project Management Services Deed which will require Hills Construction to procure the design and construction of the works referred to in clause 2.17(a);
  - (ii) the RTA has no liability in respect of the work referred to in clause 2.17(a) except as set out in the Project Management Services Deed;
  - (iii) the RTA has no liability to the Company and the Trustee and the Company and the Trustee have no claim against the RTA in respect of the Project Management Services Deed, including claims in respect of:
    - (A) defective or late completion of or failure to complete work under the Project Management Services Deed; or
    - (B) any non-compliance with any relevant environmental requirements;
  - (iv) they are not excused from any breach of their obligations under the Project Documents which is a result of performance or non-performance by:
    - (A) Hills Construction under the Project Management Services Deed; or
    - (B) any party under any agreement Hills Construction enters into to discharge the obligation referred to in clause 2.17(b)(i);
  - (v) they must indemnify the RTA in respect of any damage, expense, loss or liability the RTA suffers or incurs in respect of the Project Management Services Deed other than payments which the RTA is expressly required to make under that deed; and
  - (vi) the Company and the Trustee are responsible for the integration, interface and co-ordination of the design and construction of the Company Road and the Trust Road with the design and construction activities of Hills Construction referred to in clause 2.17(b)(i).

## 2.18 M2 Upgrade

- (a) The State and RTA acknowledge that they consent to the Hills Motorway Parties undertaking the M2 Upgrade in accordance with the M2 Upgrade Documents.
- (b) Subject to clause 2.18(d), the parties acknowledge and agree that the undertaking of the M2 Upgrade by the Hills Motorway Parties to the standard required under the M2 Upgrade Project Deed or any other requirement of the M2 Upgrade Project Deed does not alter or vary the standard to which the M2 Motorway (excluding the M2 Upgrade) was or is required to be designed or constructed or is required to be operated and maintained in accordance with this deed (except to the extent the Scope of Works and Technical Criteria is expressly amended by schedule 1 of the M2 Upgrade Project Deed).
- (c) The parties acknowledge and agree that, subject to and in accordance with the M2 Upgrade Documents:

- (i) the M2 Upgrade does not constitute an Alternative Road;
  - (ii) the entry into the M2 Upgrade Documents is not a matter capable of materially affecting the Project for the purposes of clause 2.1(c)(iii); and
  - (iii) the entry into the M2 Upgrade Documents does not give rise to any circumstance referred to in clauses 2.1 and 2.8 of this Project Deed.
- (d) The parties acknowledge and agree that the M2 Upgrade Works (or the performance of any other obligations under the M2 Upgrade Project Deed) if undertaken in accordance with M2 Upgrade Documents, do not or will not constitute:
- (i) damage, defect or disrepair under clauses 9.4, 9.5(a), 10.1(b) or 10.7 of this deed, or otherwise;
  - (ii) a failure to operate, maintain and repair the M2 Motorway and Ancillary Works for the purposes of clauses 0 and 9 of this deed; or
  - (iii) a failure to comply with any clauses of this deed identified by the Company and the Trustee as agreed or determined in accordance with clause 7.1(a)(ii)(D) of Annexure A to the M2 Upgrade Project Deed or clause 9.5(b)(v) of the M2 Upgrade Project Deed.

### **3. THE LAND AND LICENSED AREAS**

#### **3.1 Access to Land**

- (a) The RTA must give the Company and the Trustee and their contractors, or ensure the Company and the Trustee and their contractors have, sufficient access to:
  - (i) each parcel of land listed in the Land Acquisition Schedule by the date shown for that parcel; and
  - (ii) any other land comprising the Land and the Licensed Areas as soon as reasonably possible,

to enable the Company and the Trustee to perform their obligations under the Project Documents.

- (b) The RTA must be the registered proprietor of the Land by the M2 Motorway Commencement Date, free of all encumbrances, easements or rights of way (other than easements for Services and existing roads) which would materially prejudice the Company's or the Trustee's ability to perform its obligations under the Project Documents.

#### **3.2 Licensed Areas**

- (a) The Company and the Trustee must, as soon as practicable, notify the RTA of any additional land to which they require temporary access to construct the M2 Motorway.
- (b) Within 14 days of receiving a notice under clause 3.2(a), the RTA, the Company and the Trustee must enter into good faith negotiations to agree on a schedule detailing:



- (i) the additional land to which the Company and the Trustee require temporary access to construct the M2 Motorway; and
- (ii) the time by which the RTA must give the Company and the Trustee access to that additional land,

on the basis that the RTA will use its reasonable endeavours to give the Company and the Trustee access to that additional land.

- (c) The RTA must give the Company and the Trustee access to the land detailed in the schedule referred to in clause 3.2(b) in accordance with that schedule.

### 3.3 Drainage basins and related watercourses

- (a) The Company and the Trustee must ensure that, where it is necessary for:

- (i) drainage basins to be constructed; and
- (ii) related watercourses to be altered,

this is done, to the greatest extent possible, on the Land.

- (b) If it is not possible for the Company and the Trustee to construct or alter drainage basins and related watercourses on the Land, the Company and the Trustee must use their best endeavours to obtain the easements to access, construct, alter, maintain and repair the drainage basins and related watercourses on land:

- (i) adjacent to the Land; or
- (ii) owned by the New South Wales government or a New South Wales government authority.

- (c) Subject to clause 3.3(a), the RTA must reasonably assist the Company and the Trustee to obtain easements referred to in clause 3.3(b).

- (d) If it is not possible for the Company and the Trustee to:

- (i) construct or alter the drainage basins and related watercourses in accordance with clause 3.3(a); or
- (ii) obtain the easements in accordance with clause 3.3(b),

the Company and the Trustee must give the RTA a schedule setting out the land to which they reasonably require access, and the date by which they reasonably require access.

- (e) If the Company and the Trustee give the RTA a schedule referred to in clause 3.3(d), the RTA must use its reasonable endeavours to give the Company and the Trustee access to the land in accordance with that schedule.

- (f) If the RTA is unable to give the Company and the Trustee access to the land in accordance with clause 3.3(e), it must ensure that the Company and the Trustee have access to land to construct drainage basins and related watercourses on a basis which represents a reasonable and cost-effective engineering solution.

### 3.4 Risk of obtaining access to additional land

- (a) Subject to clause 3.2(c) and 3.3(e), the Company and the Trustee acknowledge that:
  - (i) integration of the requirements for access to any land not referred to in the Land Acquisition Schedule to which access is required for the purposes of the Project, including any land required for a service centre as contemplated by clause 8.7 into the design and construction requirements for the Project is the sole risk of the Company and the Trustee; and
  - (ii) the Company and the Trustee may not claim, and the RTA has no liability in respect of, any delay, additional costs or other effects on the Project related to the ability of the Company or the Trustee or their contractors to obtain access to that land.
- (b) The RTA has no liability in respect of identifying and obtaining access to land referred to in clause 3.4(a) other than in accordance with the agreed schedules referred to in clause 3.2(c), clause 3.3(e) and clause 3.3(f).

### 3.5 Condition of structures

- (a) The RTA makes no representation and gives no warranty to the Company or the Trustee in respect of:
  - (i) the condition of:
    - (A) the Land or the Licensed Areas; or
    - (B) any structure on the Land or on the Licensed Areas; or
  - (ii) the location or availability of Services in respect of the Premises.
- (b) The Company and the Trustee must accept:
  - (i) the Land and the Licensed Areas; and
  - (ii) structures on the Land and the Licensed Areas,in their present condition and subject to all defects including all subsurface soil conditions.
- (c) The parties acknowledge that to the extent that clause 2.1(d)(ii)(A) is satisfied, clause 3.5(b) does not allocate risk for the purposes of clause 2.1(d)(ii)(B).

### 3.6 Keeping Land tidy

Subject to clause 9, and having regard to:

- (a) the Company's obligation to construct the Company Road; and
- (b) the Trustee's obligation to construct the Trust Road,