
Annexure D

TERMS OF APPOINTMENT FOR EXPERT

(Clause 11.4(g))

To: *[Insert name of Expert]*

By a deed (**M5 West Widening Deed**) dated [] between Roads & Maritime Services (**RMS**), the Minister for Roads and Ports for and on behalf of Her Majesty Queen Elizabeth the Second in the right of the State of New South Wales (**Minister**) and Interlink Roads Pty Limited (**Company**), the parties agreed to submit disputes that might arise between them to an expert for determination pursuant to clauses 11.3 to 11.8 (inclusive) of the M5 West Widening Deed (**Expert Determination Process**), the Rules for Expert Determination Process (**Rules**) set out in clause 11.5 of the M5 West Widening Deed, and the Code of Conduct for an Expert (**Code of Conduct**) which forms Appendix 1 to this letter.

A dispute has arisen between the parties. A short summary of the dispute is attached to this letter (**Dispute**).

The parties agree to appoint you

of

as the sole expert to determine the Dispute in accordance with the Expert Determination Process, Rules and Code of Conduct. You agree to resolve the Dispute by making a determination in accordance with the Expert Determination Process, Rules and Code of Conduct.

The parties agree to pay you [\$] per hour (plus GST at the applicable rate). RMS and the Company will bear, in equal shares, the Expert's fees and charges associated with the determination.

The determination of the Dispute must be completed within 30 days of the date of your acceptance of this appointment, or such extended period as the parties may agree.

The parties agree that you will not be liable in any way arising out of or in connection with the determination of the Dispute, except in the case of fraud on your part.

Dated

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For RMS

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For the Company

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For the Minister

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For the Expert

Appendix 1 - Code of Conduct for an Expert

1. The function of the expert is to make a determination on the Dispute in accordance with the Rules in clause 11.5 of the M5 West Widening Deed (or any other rules which the expert in his or her absolute discretion decides), this code of conduct and the letter of appointment of the expert.
2. The expert must receive the written submissions and responses of the parties in accordance with the procedures specified in the above rules and may require any further information or documentation from the parties which is reasonably necessary to determine the Dispute.
3. The expert must decide whether a conference is necessary to receive further information. The expert must inform the parties of the subject matter of any conference and may hear representations only on those matters.
4. The expert is not bound by the rules of evidence, may receive information in any manner the expert thinks fit (including as an inquisitor), and must meet the requirements of procedural fairness.
5. The expert must disclose to all parties all information and documents received. If a Party fails to make a written submission as may be required or appear at any conference after having received the appropriate notice, the expert may continue with the process. Subject to this, discussions or communications with the expert must only take place in the presence of all parties.
6. The expert must reach a determination on the basis of the information received from the parties and on the basis of the expert's own expertise. The decision must be reached as an expert and not as an arbitrator. The expert's determination must be made as soon as possible and in any event within the period set out in the letter of appointment of the expert. The determination, once made, signed by the expert, must be notified and given immediately to the parties in writing.
7. The expert must keep all information received confidential and must not disclose that information without the prior written consent of the parties.
8. The expert must inform the parties immediately of any circumstances that might adversely affect the expert's capacity to act independently or impartially. The expert, in those circumstances, must terminate the proceedings, unless the parties agree otherwise.