

State of Queensland

(State)

Nexus Infrastructure Pty Ltd ACN 600 535 180 in its own right and as trustee for the Nexus
Infrastructure Unit Trust

(Project Co)

Close-Out Modification - State Side Deed

Toowoomba Second Range Crossing

Contents

1	Interpretation	3
1.1	Definitions	3
1.2	Interpretation	6
1.3	Inconsistency	7
1.4	Project Document	7
1.5	Commencement	7
1.6	Close-Out Modification	7
2	Project Co Indemnity	8
3	D&C Subcontractor Management of O&M Originating Claims	8
3.1	Notification requirements	8
3.2	D&C Subcontractor Management of O&M Originating Claims	10
3.3	Communication in respect of an O&M Extra -Contractual Claim	12
3.4	State election to defend O&M Originating Claims	12
4	Application of limitation	12
5	Not used	12
6	Not used	12
7	Progressive Payment of Costs	12
8	Not used	12
9	Procurement of releases by the O&M Subcontractor	12
10	Not used	13
11	Extension to the Date for Close-Out	13
11.1	Extension to the Date for Close-Out	13
11.2	Effectiveness	13
12	Set-off	13
13	Further Assurances	13
14	Notices under this Deed	13
15	Assignment	14
16	Amendment	14
17	Costs	14
18	GST	14
18.1	Recovery of GST	14
18.2	Liability net of GST	14
18.3	Adjustment events	14
18.4	Survival	14
18.5	Definitions	14
19	Governing Law and Jurisdiction	15
20	Counterparts	15
	Schedule 1	18
	Schedule 2	19
	Schedule 3	20
	Schedule 4	21
	Schedule 5	22
	Schedule 6	23

This Deed is made on **18 September 2024**

Parties

- 1 **The State of Queensland (State); and**
- 2 **Nexus Infrastructure Pty Ltd (ACN 600 535 180) in its own right and as trustee for the Nexus Infrastructure Unit Trust (Project Co)**

Recitals

- A On or about the date of this Deed, the State issued the Close-Out Modification to Project Co.
- B The parties wish to make additional commitments on the terms of this Deed.

It is agreed as follows.

1 Interpretation

1.1 Definitions

Unless otherwise expressly stated to the contrary, terms in this Deed have the same meaning as set out in the Project Deed.

Acceptance of Additional Claim means a notice pursuant to the terms of the Conduct of Defence Deed under which a claim is added to the scope of the Conduct of Defence Deed.

Additional Works means the Cut 19 Additional Works, Cut 21 Additional Works, the Cut 24 Additional Works, the Cut 26 Additional Works and the Pavement Additional Works.

Additional Works Completion means Cut 19 Additional Works Completion, Cut 21 Additional Works Completion, Cut 24 Additional Works Completion, Cut 26 Additional Works Completion, or Pavement Additional Works Completion, or all of them as the context may require or permit.

ARL means an Assessed Risk Level as determined by an SRA.

Challenge Proceedings means proceedings commenced by the O&M Subcontractor whether by way of court or arbitration that seek orders, an award, declarations, determinations, judgement or any other relief to the effect that:

- (a) the Close-Out Modification, or the Close-Out Modification Certification are void and/or unenforceable; or
- (b) the parties are enjoined from giving effect to the Close-Out Modification, or the Close-Out Modification Certification.

Close-Out D&C Side Deed means the deed titled 'Close-Out Modification – D&C Side Deed' between Project Co and the D&C Subcontractor dated on or around the date of this Deed.

Close-Out Modification means the Modification Order issued by the State on or about the date of this Deed, in the form set out in Schedule 3 to this Deed.

Close-Out Modification Certification means the certification that Close-Out has been achieved by the Independent Reviewer as contemplated by the Close-Out Modification.

Close-Out Modification (D&C) means the Modification Order issued by Project Co to the D&C Subcontractor on or about the date of this Deed, in the form set out in Schedule 4 to this Deed.

Close-Out Modification (O&M) means the Modification Order issued by Project Co to the O&M Subcontractor on or about the date of this Deed, in the form set out in Schedule 5 to this Deed.

Close-Out Rejection Notice means the notice issued by the Independent Reviewer dated 18 August 2022 and titled 'Part 20 – Independent Reviewer's Notice – Close-Out (Work remaining to be performed)'.

Conduct of Defence Deed means the deed to be entered into by the State and D&C Subcontractor relating to the conduct of the defence of O&M Originating Claims, in the form set out in Schedule 7 to this Deed.

Cut 19 Additional Works has the meaning given in the Close-Out Modification.

Cut 19 Additional Works Completion has the meaning given in the Close-Out Modification.

Cut 21 has the meaning given in the Close-Out Modification.

Cut 21 Additional Works has the meaning given in the Close-Out Modification.

Cut 21 Additional Works Completion has the meaning given in the Close-Out Modification.

Cut 21 Monitoring and Management Plan has the meaning given in the Close-Out Modification.

Cut 24 has the meaning given in the Close-Out Modification.

Cut 24 Additional Works has the meaning given in the Close-Out Modification.

Cut 24 Additional Works Completion has the meaning given in the Close-Out Modification.

Cut 26 has the meaning given in the Close-Out Modification.

Cut 26 Additional Works has the meaning given in the Close-Out Modification.

Cut 26 Additional Works Completion has the meaning given in the Close-Out Modification.

Cut 26 Monitoring and Management Plan has the meaning given in the Close-Out Modification.

D&C Subcontractor Deed Poll means the deed poll in favour of the State delivered by the D&C Subcontractor on or about the date of this Deed, in the form set out in Schedule 6 to this Deed

D&C Subcontract means the agreement titled 'D&C Subcontract – Toowoomba Second Range Crossing' between Project Co and the D&C Subcontractor dated 21 August 2015.

D&C Subcontractor means Acciona Infrastructure Australia Pty Ltd ACN 140 915 251 and Ferrovial Construction (Australia) Pty Ltd ACN 150 820 116.

Date for Cut 19 Additional Works Completion has the meaning given in the Close-Out Modification.

Date for Cut 21 Additional Works Completion has the meaning given in the Close-Out Modification.

Date for Cut 24 Additional Works Completion has the meaning given in the Close-Out Modification.

Date for Cut 26 Additional Works Completion has the meaning given in the Close-Out Modification.

Date for Pavement Additional Works Completion has the meaning given in the Close-Out Modification.

Deed of Settlement and Release (Upstream) means the deed titled 'Deed of settlement and release (Upstream)' between the State and Project Co dated on or around the date of this Deed.

E24 Issues means the presence of a Geotechnical Issue (as defined in the Close-Out Modification) in Embankment 24.

E24 Monitoring and Management Plan has the meaning given in the Close-Out Modification.

Embankment 24 has the meaning given in the Close-Out Modification.

Extension Period means the later of 31 December 2026 and the date which is 6 months after the date of an order or award referred to in clause 11.2(b)(iii).

Indemnified Matters means each of the Close-Out Modification, Close-Out Modification (D&C), Close-Out Modification (O&M), the Pavement Defects, the Indemnified Geotechnical Matters, the Close-Out State Side Deed and this Deed.

Indemnified Geotechnical Matters means:

- (a) the issue raised by Project Co to the State and the Independent Reviewer with respect to Geotechnical Element Compliance in its Defect Notice dated 30 July 2021 which was the subject of a notice raised by Project Co to the State and the Independent Reviewer on 2 August 2021;
- (b) any fact, matter or circumstance as to the Cut 21 SRA, the Cut 24 SRA and/or the Cut 26 SRA not reporting an ARL of 4 or above, as particularised in rows B3, B4 and B40 of Schedule 2 of the Close-Out Rejection Notice;
- (c) the issues raised by Project Co to the State and the Independent Reviewer with respect to the SRA and Design Life of Cut 21, Cut 24 and Cut 26 on 30 July 2021;
- (d) any E24 Issues; and
- (e) the facts, matters and circumstances as to batter protection and insufficient drainage issues at Cut 21, as particularised in row A3 of Schedule 2 of the Close-Out Rejection Notice.

Legal Representatives means the lawyers (including barristers) retained by the D&C Subcontractor in respect of an O&M Originating Claim pursuant to the Conduct of Defence Deed.

Modification Orders mean:

- (a) the Close-Out Modification (D&C); and
- (b) the Close-Out Modification (O&M).

O&M Extra-Contractual Claim means a Claim made by the O&M Subcontractor directly against the State arising out of, in relation to, or in connection with any of the Indemnified Matters

O&M Linked Claim means any Claim commenced by the O&M Subcontractor against Project Co, which the O&M Subcontractor notifies to Project Co as a Linked Claim (as that term is defined in the O&M Subcontract) under clause 41A.2(a)(i) of the O&M Subcontract arising out of, in relation to, or in connection with any of the Indemnified Matters.

O&M Originating Claim means:

- (a) an O&M Extra-Contractual Claim; and
- (b) an O&M Pass-through Claim.

O&M Pass-through Claim means a Claim made by Project Co against the State under the Project Deed that Project Co is contractually required to make as a consequence of an O&M Linked Claim made by the O&M Subcontractor.

Pavement Additional Works has the meaning given in the Close-Out Modification.

Pavement Additional Works Completion has the meaning given in the Close-Out Modification.

Pavement Defects means the issues initially raised by the O&M Subcontractor with respect to the alleged condition of the pavement at Tollroad Completion and alleged ongoing deterioration of the pavement in its correspondence dated 28 January 2020, 6 July 2020, 13 January 2021, 7 July 2021, 29 July 2021, and which were the subject of:

- (a) a 'Defects Notification' issued by Project Co to the State and the Independent Reviewer dated 30 July 2021;
- (b) the Pavement Defect Notice; and
- (c) a Project Co Defects Direction dated 2 August 2021.

Pavement Defect Notice means the 'Defects Notification' issued by Project Co to the D&C Subcontractor dated 30 July 2021.

Project Co Indemnified Claim means any suit, claim, action, demand or proceeding:

- (a) commenced by the O&M Subcontractor or D&C Subcontractor (whether under the Project Documents or otherwise), or any penalty, cost, charge, expense, or Liability arising therefrom; or
- (b) arising from a Claim under the Project Deed which has a corresponding Linked Claim (as defined in the O&M Contract or D&C Subcontract (as the case may be)), or any penalty, cost, charge, expense, or Liability arising therefrom,

arising out of, in relation to, or in connection any of with the Indemnified Matters.

Project Deed means the agreement titled 'Project Deed – Toowoomba Second Range Crossing' between the State and Project Co dated 21 August 2015.

SRA means the analysis performance in accordance with Roads and Maritime Services, New South Wales Guide to Slope Risk Analysis, Version 4 performed by a Geotechnical Engineer holding the relevant RMS NSW Slope Risk Accreditation.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the following rules apply unless the context makes it clear that a rule is not intended to apply:
 - (i) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (ii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (iii) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (iv) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (v) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (vi) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
 - (vii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (viii) includes in any form is not a word of limitation;

- (ix) a reference to \$ or dollar is to Australian currency; and
- (x) references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

1.3 Inconsistency

The parties acknowledge and agree that, as between them, if there is any inconsistency or conflict between this Deed, the Project Deed, the E24 Monitoring and Management Plan, the Cut 21 Monitoring and Management Plan, or the Cut 26 Monitoring and Management Plan, then to the extent of that inconsistency or conflict, the terms of this Deed will prevail to the extent of the inconsistency and the provisions of the relevant document will be construed accordingly.

1.4 Project Document

The State and Project Co agree that this Deed and the Close-Out Modification are:

- (a) Project Documents; and
 - (b) State Project Documents,
- for the purpose of the Project Deed.

1.5 Commencement

This Deed commences when:

- (a) Project Co and the D&C Subcontractor have entered into the Close-Out D&C Side Deed;
- (b) Project Co and the State have entered into the Deed of Settlement and Release (Upstream);
- (c) each of the conditions precedent to the Close-Out D&C Side Deed commencing has been satisfied in accordance with the Close-Out D&C Side Deed (other than any condition precedent to the Close-Out D&C Side Deed requiring the satisfaction of the conditions precedent contained in this clause 1.5);
- (d) D&C Subcontractor has entered into and delivered to the State the D&C Subcontractor Deed Poll;
- (e) the Close-Out Modification has been issued by the State; and
- (f) Project Co has notified the State that it is ready to issue the corresponding Modification Orders to the D&C Subcontractor and the O&M Subcontractor respectively,

except for the provisions contained in clauses 1 and 13 to 20 (inclusive) of this Deed, which commence on the date that this Deed is executed by the last party to execute it.

1.6 Close-Out Modification

Project Co:

- (a) warrants that it has had an opportunity to review, and agrees to, the terms of the Close-Out Modification;
- (b) agrees that it will not challenge the validity or efficacy of the Close-Out Modification or Close-Out Modification Certification or seek to set either of them aside or consent to orders setting either of them aside; and

- (c) agrees that:
 - (i) the Close-Out Modification has no effect until the corresponding Modification Orders to the D&C Subcontractor and the O&M Subcontractor respectively have been issued; and
 - (ii) if all of the conditions precedent in clause 1.5(a) to clause 1.5(f) are not satisfied within 14 Business Days of the Close-Out Modification being issued to Project Co or such longer period as may be agreed in writing by the State, the Close-Out Modification is taken to be withdrawn and Project Co will have no Claim against the State as a result of the withdrawal.

2 Project Co Indemnity

- (a) Project Co indemnifies the State against, and will keep the State indemnified, against any Liability (including legal costs and costs awards against the State) that may be suffered or incurred by the State arising out of, in relation to, or in any way in connection with any of the Indemnified Matters, including a Project Co Indemnified Claim.
- (b) Project Co acknowledges and agrees that the State has:
 - (i) entered into the Deed; and
 - (ii) has issued, or will issue, the Close-Out Modification to Project Co, in reliance upon the releases contained in the Deed of Settlement and Release (Upstream) and the indemnity contained in clause 2(a).
- (c) The indemnity in clause 2(a) is a continuing obligation, separate and independent from the other obligations of the parties under this Deed, and will survive the termination, completion or expiration of this Deed, or a determination that the Close-Out Modification is void and/or unenforceable.
- (d) For the avoidance of doubt, it is not necessary for a party to make any payment before enforcing a right of indemnity conferred by this Deed.
- (e) Project Co must pay on demand as a debt due and payable any amount it must pay under the indemnity in clause 2(a).

3 D&C Subcontractor Management of O&M Originating Claims

3.1 Notification requirements

- (a) **(Initial Notice)** A party must immediately notify the other in writing upon becoming aware that the O&M Subcontractor has made, or intends to make:
 - (i) a Claim against Project Co that is an O&M Linked Claim; or
 - (ii) an O&M Extra-Contractual Claim.
- (b) **(O&M Extra-Contractual Claim)** If the State receives an O&M Extra-Contractual Claim from the O&M Subcontractor, the State must, as soon as practicable after receipt, provide Project Co with:
 - (i) a copy of the O&M Extra-Contractual Claim; and
 - (ii) to the extent that the State is so aware, reasonable details of the circumstances giving rise to the O&M Extra-Contractual Claim.
- (c) **(O&M Pass-through Claim)** Without limiting or otherwise affecting the operation of terms of the Project Deed relating to the giving of notice of, or making, Claims by Project Co, if

Project Co makes an O&M Pass-through Claim, Project Co must, when making the O&M Pass-through Claim, notify the State that it is a Claim to which this Deed applies.

- (d) **(Election by the State)** Within a reasonable period of time after the State's receipt of an O&M Originating Claim, the State must give a written notice to Project Co stating whether:
 - (i) the State will conduct the defence of the O&M Originating Claim; or
 - (ii) the process in clause 3.2 is to apply to the conduct of the defence of the O&M Originating Claim.
- (e) **(Deemed defence)** Unless and until a notice is given by the State stating that it elects clause 3.1(d)(ii) to apply, the parties shall proceed on the basis that the State will conduct the defence of the O&M Originating Claim.

An election made by the State under clause 3.1(d), does not in any way prevent, restrict or otherwise impact any defence that the State may consider available to it to defend an O&M Originating Claim, including non-compliance with any notice or other procedural requirements under the Project Deed.
- (f) **(Conferral with D&C Subcontractor)** If the State makes an election under clause 3.1(d)(i) to conduct the defence of an O&M Extra-Contractual Claim, the State must:
 - (i) regularly consult with Project Co in relation to the manner in which the O&M Extra-Contractual Claim is defended, including in relation to any proposed settlement of the O&M Extra-Contractual Claim and including providing detailed information as to the actual and prospective third party costs which are or will be incurred;
 - (ii) not settle or compromise the O&M Extra-Contractual Claim without the D&C Subcontractor's prior consent (not to be unreasonably withheld or delayed) to the extent that obtaining such consent will not put the State in breach of any Law or government policy;
 - (iii) have regard to, but not be obliged to adopt, any recommendations by the D&C Subcontractor as to the manner in which the O&M Extra-Contractual Claim should be defended and third party costs minimised; and
 - (iv) promptly keep Project Co and the D&C Subcontractor informed of the progress of the O&M Extra-Contractual Claim.
- (g) **(State may change election)** The State may at any time, and in its absolute discretion, change an election made under clause 3.1(d) by giving Project Co a written notice that informs Project Co:
 - (i) that the State changes its election previously made under clause 3.1(d); and
 - (ii) which of the two processes described in subparagraphs (i) and (ii) of clause 3.1(d) it elects to apply from the date of giving the notice.
- (h) **(Facilitate change)** If the State gives a notice of change of election under clause 3.1(g) which elects that clause 3.1(d)(i) applies and so the State will conduct the defence of the O&M Originating Claim:
 - (i) all authorities given by the State to D&C Subcontractor in the Conduct of Defence Deed are terminated upon giving the notice;
 - (ii) the State will continue as the sole client of the Legal Representatives unless and until the State chooses to end the engagement of the Legal Representatives;

- (iii) Project Co must not at any future time engage the Legal Representatives in relation to any matter or circumstances relating to the relevant O&M Originating Claim;
 - (iv) Project Co will promptly pay all outstanding amounts to which the Legal Representatives are entitled for services provided and disbursements incurred by them up to the date the State gave Project Co the notice under clause 3.1(g), failing which the State may make the payment to the Legal Representatives and the amount so paid will be a debt immediately due and payable to the State by Project Co.
- (i) **(Independent legal advice)** Notwithstanding an election by the State that clause 3.1(d)(ii) applies, the State may appoint at any time its choice of legal representative to act for and advise the State in connection with a relevant O&M Originating Claim and its defence, the cost of which may be claimed from Project Co under clause 7.

3.2 D&C Subcontractor Management of O&M Originating Claims

- (a) **(D&C Subcontractor Defence election)** Where the State gives a notice under clause 3.1(d)(ii) or a notice under clause 3.1(g) of its election to apply the process in clause 3.1(d)(ii), Project Co must, within 7 Business Days of receipt of that notice, provide a written notice to the State of its election between either:
- (i) the D&C Subcontractor will conduct the defence of the O&M Originating Claim on behalf of the State; or
 - (ii) Project Co will pay to the O&M Subcontractor the full amount claimed or other amount agreed by the O&M Subcontractor to obtain a full and final settlement of (as applicable) the O&M Extra-Contractual Claim or the O&M Linked Claim to which the O&M Pass-through claim relates.

Unless, before the expiry of the notice period, Project Co gives the State a notice electing that clause 3.2(a)(i) applies, Project Co will be deemed to have given the State a notice that Project Co elects that clause 3.2(a)(ii) applies on the last day of the notice period.

- (b) **(Payment)** Project Co must within 10 Business Days of giving or deemed to have given the State a notice electing that clause 3.2(a)(ii) applies pay the O&M Subcontractor the relevant amount and give the State written confirmation of that payment having been made.
- (c) **(Release and settlement)** If Project Co gives or is deemed to have given a notice under clause 3.2(a) electing that clause 3.2(a)(ii) applies, and:
- (i) the O&M Originating Claim is an O&M Pass-through Claim, Project Co unconditionally withdraws and releases the State from the O&M Pass-through Claim immediately upon giving or being deemed to have given the notice; or
 - (ii) the O&M Originating Claim is an O&M Extra Contractual Claim, Project Co must use its best endeavours to procure an appropriate deed of release and settlement from the O&M Subcontractor in favour of the State in respect of the O&M Extra-Contractual Claim. The deed of release and settlement must be on terms approved in writing by the State, which terms must include that:
 - (A) the payment made by Project Co is made in full and final settlement of the claim made against the State;

- (B) the payment is made without any admission of liability of the State to the O&M Subcontractor in respect of the matters the subject of the relevant O&M Extra-Contractual Claim; and
- (C) the deed and the settlement that it records are to be kept confidential by the O&M Subcontractor.

As regards Project Co, the deed and the settlement that it records is Confidential Information under the Project Deed.

- (d) **(D&C Subcontractor's conduct of defence)** If Project Co notifies the State in writing that the D&C Subcontractor will conduct the defence of an O&M Originating Claim on behalf of the State in accordance with clause 3.2(a)(i):
 - (i) Project Co must give with the notice:
 - (A) if not already provided to the State, the Conduct of Defence Deed duly executed by the D&C Subcontractor; or
 - (B) if an executed Conduct of Defence Deed has already been provided to the State, an executed Acceptance of Additional Claim for the relevant O&M Originating Claim;
 - (ii) unless the State has notified Project Co of its change of election under clause 3.1(g) and will conduct the defence of the relevant Originating O&M Claim itself, within 10 Business Days of receipt of Project Co's notice, the State must countersign and provide to Project Co a copy of the Conduct of Defence Deed or Acceptance of Additional Claim (as the case may be).
- (e) **(State acknowledgement of Project Co election to defend)** Where Project Co has notified the State that the D&C Subcontractor will conduct the defence of an O&M Pass-through Claim on behalf of the State in accordance with clause 3.2(a)(i):
 - (i) the State acknowledges that Project Co may appoint, at any time during the defence of the relevant O&M Linked Claim to which the O&M Pass-through Claim relates, in its sole discretion its choice of legal representative to act solely for Project Co (**Project Co Counsel**), and notify the State of such appointment;
 - (ii) if clause 3.2(e)(i) applies, the State acknowledges that if a 'solicitor on the record' is required in relation to the relevant O&M Linked Claim, Project Co must direct Project Co Counsel to enter an appearance as the 'solicitor on the record'; and
 - (iii) the State must not, communicate with the O&M Subcontractor in relation to the relevant O&M Linked Claim to which the O&M Pass-through Claim relates (except as may be necessary for the State to communicate with the O&M Subcontractor under or in connection with this Deed or as required by court proceedings, including as permitted by clause 3.2(f)) without the prior written consent of the D&C Subcontractor.
- (f) **(Project Co obligations)** Where an O&M Pass-through Claim has been made against the State, Project Co:
 - (i) must keep the State informed, and procure that the D&C Subcontractor keeps the State informed (if applicable), of the progress of the relevant O&M Linked Claim to which the O&M Pass-through Claim relates;
 - (ii) must regularly consult with, and procure that the D&C Subcontractor regularly consults with (if applicable), the State in relation to the manner in which Project

Co pursues the defence of the O&M Linked Claim to which the O&M Pass-through Claim relates; and

- (iii) when pursuing its claim against the State, must not make any claim or submission or otherwise act in a manner which is inconsistent with a defence that it raises against the relevant O&M Linked Claim to which the O&M Pass-through Claim relates.

3.3 Communication in respect of an O&M Extra -Contractual Claim

Without limiting clause 3.2(d), if the D&C Subcontractor elects to conduct the defence of an O&M Extra-Contractual Claim in accordance with clause 3.2(a)(i) the State must give to Project Co a copy of any communication the State gives or receives from the O&M Subcontractor in relation to the O&M Extra-Contractual Claim promptly when it so gives or receives the communication.

3.4 State election to defend O&M Originating Claims

Project Co acknowledges and agrees that the State's election under clause 3.1(d)(i) and subsequent defence of an O&M Originating Claim does not in any way limit or affect the indemnity in clause 2(a).

4 Application of limitation

Clause 37.11(b)(i) and (ii) (Limits on Project Co's liability to indemnify and release) of the Project Deed apply to the indemnities in this Deed as though a reference to "this Deed" in that clause were a reference to this Deed.

5 Not used

6 Not used

7 Progressive Payment of Costs

Without limiting clause 2, the State may progressively require Project Co to pay the State's costs and expenses incurred in connection with an O&M Originating Claim, including by:

- (a) **(Legal costs)** arranging for all invoices for legal fees, costs and disbursements to be issued by the relevant legal service provider to Project Co directly; and / or
- (b) **(Other costs)** the State issuing tax invoices to Project Co on a monthly basis, in which case Project Co must make payment of such invoice within 30 days from the date of receipt of the invoice.

Costs and expenses of the State that may be claimed progressively include all those which are incurred in taking actions at the request of the D&C Subcontractor.

8 Not used

9 Procurement of releases by the O&M Subcontractor

- (a) This clause 9 applies on and from the time the D&C Subcontractor procures a release from the O&M Subcontractor in favour of the State and otherwise on terms acceptable to the State, in respect of claims, actions, suits, demands or proceedings arising out of, in relation to, or in connection with all of the Indemnified Matters, except for E24 Issues **(O&M Release)**.
- (b) Upon the effective date of the O&M Release, the definition of 'Indemnified Matters' in clause 1.1 of this Deed will be amended to read:

"Indemnified Matters means:

- (a) any E24 Issues; and
- (b) the O&M Release (including any breach, invalidity, voidness or unenforceability of the O&M Release)".

10 Not used

11 Extension to the Date for Close-Out

11.1 Extension to the Date for Close-Out

The parties agree that:

- (a) the Date for Close Out under the Project Deed is extended to 31 December 2026 (Initial Extension); and
- (b) if the conditions in section 11.2(b) are satisfied, the Date for Close-Out under the Project Deed is further extended by the Extension Period (Further Extension).

11.2 Effectiveness

- (a) The Initial Extension takes effect on the date that clause 11 commences as provided for with clause 1.5.
- (b) The Further Extension will be effective if on the day before 31 December 2026:
 - (i) A Certificate of Close-Out has been issued by the Independent Reviewer to the State and Project Co pursuant to clause 21.1(c) of the Project Deed; and
 - (ii) Challenge Proceedings have been instituted; and
 - (iii) the Close-Out Modification or the Close-Out Modification Certification have been determined by order or award in those Challenge Proceedings to be void and/or unenforceable.

12 Set-off

The State may, at any time, withhold, set-off or deduct from moneys otherwise due to Project Co under the State Project Documents or otherwise at Law:

- (a) any debt or other moneys due from Project Co to the State; and
- (b) the amount of any Claim that the State makes against Project Co, under or in respect of this Deed.

13 Further Assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

14 Notices under this Deed

Notices and directions under this Deed must be given in writing and meet the requirements for Notices in the Project Deed.

15 Assignment

A party cannot assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the other party.

16 Amendment

This Deed may be amended only by another deed executed by both parties.

17 Costs

Without limiting clause 2, Project Co must reimburse the State on demand for, and indemnifies the State against all costs and expenses (including legal fees, costs and disbursements) it reasonably incurs in connection with:

- (a) negotiating, preparing and executing; and
- (b) any consent, approval, waiver or amendment relating to, this Deed.

18 GST

18.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

18.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

18.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

18.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

18.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

19 Governing Law and Jurisdiction

This Deed is governed by the laws of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

20 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

State Side Deed

Executed and delivered as a Deed.

Each attorney executing this Deed states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Signed, sealed and delivered for and on behalf of the **State of Queensland** by **Ann-Maree Knox**, General Manager (Program Delivery and Operations), Department of Transport and Main Roads in the presence of:

Madison Krummel

Signature of witness

Madison Krummel

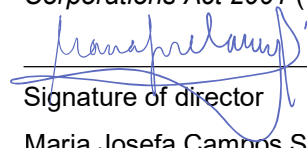
Full name of witness

Ann-Maree Knox

Signature

State Side Deed

Signed Sealed and Delivered by Nexus Infrastructure Pty Ltd (ACN 600 535 180) in its personal capacity and in its capacity as trustee of the Nexus Infrastructure Unit Trust in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of director

Maria Josefa Campos Sanchez

Name of director



Signature of ~~company secretary~~/director

David John Lamming

Name of ~~company secretary~~/director

State Side Deed

Schedule 1

Not used

State Side Deed

Schedule 2

Not used

State Side Deed

Schedule 3

Close-Out Modification

[X] 2024

Attention: Mr James Thewlis
Project Co Representative
Nexus Infrastructure Pty Ltd
PO Box 9326
Wilsonton Qld 4350

BY TEAMBINDER

Dear James

MODIFICATION ORDER - CLAUSE 33.1 OF THE PROJECT DEED - CLOSE-OUT AND OUTSTANDING WORKS COMPLETION

In this letter, capitalised terms not defined in section 7 adopt the definitions used in the Project Deed between the State of Queensland and Nexus Infrastructure Pty Ltd (as trustee) dated 21 August 2015.

1. BACKGROUND TO MODIFICATION ORDER

- (a) On or around 6 September 2019, Project Co issued a Modification Proposal to the State pursuant to clause 33.7 of the Project Deed (being the Completion Modification Proposal). The Completion Modification Proposal proposed, among other things, that Project Co and the State would instruct the Independent Reviewer:
 - (i) to disregard the Outstanding Works for the purposes of determining whether or not Tollroad Completion had occurred; and
 - (ii) that the Outstanding Works must be completed in order for Project Co to achieve:
 - (A) Close-Out (under the Project Deed); and
 - (B) Outstanding Works Completion.
- (b) On or around the same date, the State issued a Modification Order to Project Co pursuant to clause 33.1 of the Project Deed (being the Completion Modification Order), directing Project Co to undertake the Modification, as proposed in the Completion Modification Proposal.
- (c) In light of the Completion Modification Order, the Independent Reviewer was instructed to disregard the Outstanding Works for the purposes of determining whether or not Tollroad Completion had occurred. Following that instruction, the Independent Reviewer certified that, disregarding the Outstanding Works, Tollroad Completion had occurred on 31 July 2019.
- (d) Some of the Outstanding Works related to E24 and, specifically, concerned apparent geotechnical design deficiencies in the construction of E24 (Z2).
- (e) Project Co has advised, and the State accepts, that, as at the date of this Modification Order, subject to and upon issuing this Modification Order:
 - (i) E24 (Z2) is Fit For Purpose; and
 - (ii) there are no known Defects in respect of E24 (Z2),

subject to ongoing monitoring of E24 in accordance with the E24 Monitoring and Management Plan.

- (f) The State and Project Co agree that the Outstanding Works relevant to E24 (Z2) be addressed as set out in this Modification Order.

2. MODIFICATION ORDER

This Modification Order is issued by the State in accordance with clause 33.1 of the Project Deed. The purpose of the Modification is to enable the Independent Reviewer to determine whether Close-Out and Outstanding Works Completion have been achieved at or about the date of this Modification Order, by the Independent Reviewer:

- (a) taking into account the relief from compliance with certain requirements of the Performance Specification as set out in this Modification Order; and
- (b) disregarding certain other matters which may prevent the achievement of Close-Out and Outstanding Works Completion in making those determinations.

The information required to be addressed pursuant to clause 33.1 of the Project Deed is set out in the Modification Order.

This Modification Order is a State Project Document for the purposes of the Project Deed.

3. ELEMENTS OF MODIFICATION

Scope of Modification: The Modification issued by the State under clause 33.1 is for the following:

3.1 Independent Reviewer certifications

- (a) Project Co and the State must instruct the Independent Reviewer:
 - (i) when determining whether Close-Out and Outstanding Works Completion have been achieved, the Independent Reviewer will have regard to paragraph 3.2 below, which provides relief from compliance with certain requirements of the Performance Specification;
 - (ii) that the following matters (which may otherwise prevent the achievement of Close-Out) will be disregarded by the Independent Reviewer for the purposes of determining whether or not Close-Out has been achieved pursuant to clause 21.1(c)(ii) of the Project Deed:
 - (A) the Additional Works, and the facts, matters and circumstances giving rise to those Additional Works;
 - (B) clauses 2.2(a), 2.2(h) and 2.2(f) of the GDSMR;
 - (C) the SRA Defect - Cut 21, the SRA Defect – Cut 24 and the SRA Defect Cut - 26; and
 - (D) the IR Pavement Defect; and
 - (iii) if the Independent Reviewer is otherwise satisfied that Project Co has done everything which the Project Deed requires Project Co to do prior to, or as a condition precedent to, Close Out, to issue certificates of Close-Out and Outstanding Works Completion.

3.2 Compliance with the Performance Specification

- (a) To the extent the Performance Specification incorporates requirements to comply with the GDSMR (but only insofar as it relates to the Works at E24):
 - (i) subject to paragraph 3.2(c), the requirements of clauses 2.2(a) and 2.2(b) of the GDSMR are to be applied as if those requirements were amended in accordance with Annexure One;

- (ii) notwithstanding clauses 1(g) of the GDSMR and the references in clauses 2.3(b)(i), (b)(v) and (b)(vi) of the GDSMR to two-dimensional modelling and analysis, 3D modelling based on "Finite Difference Analysis" using FLAC 3D software is deemed an acceptable method of analysis; and
 - (iii) subject to paragraph 3.2(b) and paragraph 3.2(c), the requirements of the first paragraph of clause 2.4 of the GDSMR are waived.
- (b) After Close-Out has been achieved, the presence of any colluvial slope wash materials must not lead to:
 - (i) the SRA score for E24 being assessed as an ARL 1 or 2; and
 - (ii) non-compliance with the serviceability requirements of the GDSMR, as set out in clause 2.2(f) of the GDSMR.
- (c) Notwithstanding paragraphs 3.2(a) and (b) above, without limiting any provision of the Project Deed (including clause 22.1 or clause 37.3):
 - (i) in the event that there is an unexpected and observable movement on the shear plane at E24 detected through physical observation or monitoring data reported by the Supervising Geotechnical Engineer, the parties will instruct the Supervising Geotechnical Engineer to undertake increased observation and analysis (including through increased frequency of reporting of monitoring data and analysis);
 - (ii) using the monitoring data and analysis provided by the Supervising Geotechnical Engineer, the voting members of the TSRC Geotechnical Issues Monitoring and Management Committee will meet in good faith to discuss what each member considers to be the appropriate course of action to manage any identified risks arising from the movement, taking into account factors including safety, efficiency of process and recent developments in design and construction of earthworks structures similar to E24;
 - (iii) the State must consider the discussions and recommendations of the TSRC Geotechnical Issues Monitoring and Management Committee before taking the action in paragraph (iv) below; and
 - (iv) if the State requires Project Co to rebuild E24 in accordance with clauses 37.2 or 22.1, of the Project Deed, Project Co must ensure that E24 is rebuilt in accordance with the requirements of the Project Deed, including the first paragraph of clause 2.4 of the GDSMR.
- (d) Subject to paragraph 3.2(c)(iii), the State retains full discretion to exercise its rights under the Project Deed in the event that there is unexpected and observable movement on the shear plane.

3.3 Compliance with Geotechnical Monitoring and Management Plans

- (a) The Geotechnical Monitoring and Management Plans are Project Plans for the purposes of the Project Deed.
- (b) Project Co must:
 - (i) comply with the Geotechnical Monitoring and Management Plans;
 - (ii) undertake the works required to be performed by Project Co as set out in the Geotechnical Monitoring and Management Plans; and
 - (iii) ensure that its Subcontractors undertake the works required to be performed by them as set out in the Geotechnical Monitoring and Management Plans.
- (c) Project Co must update the Geotechnical Monitoring and Management Plans at the time required by, and in accordance with the process referred to in, the Geotechnical Monitoring and Management Plans and the Project Deed.

3.4 Monitoring Equipment

To the extent that a Geotechnical Monitoring and Management Plan requires the Monitoring Equipment to still be in service or available past the Expiry Date:

- (a) the Monitoring Equipment will constitute equipment for the purposes of the definition of "Tollroad"; and
- (b) Project Co must handover the Monitoring Equipment in good working order and otherwise in accordance with clause 27.2 of the Project Deed.

3.5 TSRC Geotechnical Issues Monitoring and Management Committee

- (a) The State requires that Project Co procure that the TSRC Geotechnical Issues Monitoring and Management Committee be established. The State notes that it may be that for this purpose the existing E24 Monitoring and Management Committee members commence to act as the TSRC Geotechnical Issues Monitoring and Management Committee.
- (b) The State requires that Project Co procure that:
 - (i) the Supervising Geotechnical Engineer be appointed by Project Co, the D&C Subcontractor and the State at the D&C Subcontractor's cost;
 - (ii) the TSRC Geotechnical Issues Monitoring and Management Committee will be comprised of the State, Project Co and the D&C Subcontractor as voting members;
 - (iii) the O&M Subcontractor will be entitled to observer membership of the TSRC Geotechnical Issues Monitoring and Management Committee as a non-voting member;
 - (iv) the TSRC Geotechnical Issues Monitoring and Management Committee will be governed in accordance with the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference; and
 - (v) the TSRC Geotechnical Issues Monitoring and Management Committee is advisory in nature, and its remit is set out in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

3.6 Process for identifying Geotechnical Issues

- (a) The State notes that Geotechnical Issues may be identified or raised by the State, the Supervising Geotechnical Engineer, Project Co or the D&C Subcontractor.
- (b) Where:
 - (i) Project Co or the State becomes aware of a Geotechnical Issue, Project Co or the State (as applicable) will promptly notify the other, and each of the Supervising Geotechnical Engineer, the O&M Subcontractor and the D&C Subcontractor; and
 - (ii) the Supervising Geotechnical Engineer or the D&C Subcontractor is notified or becomes aware of a Geotechnical Issue – Project Co will procure that party notifies the other, and each of the State, Project Co and the O&M Subcontractor.
- (c) Upon becoming aware of any Geotechnical Issue, Project Co:
 - (i) must promptly raise the Geotechnical Issue with the TSRC Geotechnical Issues Monitoring and Management Committee;
 - (ii) subject to paragraph 3.6(c)(iii), may elect, in its absolute discretion, to conduct within a reasonable period of time, a Geotechnical Investigation in accordance with paragraph 3.7, in respect of the Geotechnical Issue the subject of the notice; and

- (iii) must, if directed to do so by the State, conduct a Geotechnical Investigation in accordance with paragraph 3.7, in respect of the Geotechnical Issue the subject of the direction.
- (d) Any notice issued in accordance with this paragraph 3.6 must comply with the requirements of clause 57.1 of the Project Deed.

3.7 Geotechnical Investigation

- (a) Project Co may elect to (or must, if directed to do so by the State) further investigate a Geotechnical Issue notified or identified as contemplated by paragraph 3.6(a) (**Geotechnical Investigation**) in accordance with this paragraph 3.7.
- (b) If Project Co undertakes a Geotechnical Investigation, it must engage such experts as Project Co considers are appropriate to consider, investigate and report on the Geotechnical Issue. Any expert appointed to conduct a Geotechnical Investigation must be an independent person with appropriate skills having regard to the nature of the Geotechnical Issue.
- (c) Project Co must ensure (acting reasonably) that all information, access and assistance as is required for each Geotechnical Investigation (including any further investigations undertaken by Project Co or required by the State as contemplated by paragraph 3.7(e)) is promptly provided to Project Co, the State and any appointed expert.
- (d) Project Co must report to the State on the outcome of the Geotechnical Investigation and the recommendations of the relevant expert (**Geotechnical Report**).
- (e) Upon consideration of any Geotechnical Report, the State may (acting reasonably) direct further action or investigation with respect to the Geotechnical Issue in accordance with these paragraphs 3.6 and 3.7 or in accordance with the Project Deed, including by forming the view that a Defect exists and requires rectification.
- (f) Any further action directed by the State in accordance with paragraph 3.7(e) will not constitute a Modification Order or entitle Project Co to bring any Claim against the State.
- (g) Project Co must provide a copy of any Geotechnical Report to the TSRC Geotechnical Issues Monitoring and Management Committee.
- (h) Project Co must bear the costs of any Geotechnical Investigation.
- (i) Promptly following completion of each Geotechnical Investigation, Project Co must, at its cost:
 - (i) prepare a remedial plan setting out the manner in which Project Co will address any Defects identified by the State or Project Co (**Remedial Plan**) and provide a copy of the Remedial Plan to the State; and
 - (ii) update the Remedial Plan to reflect any comments by the State (acting reasonably);
 - (iii) implement such Remedial Plan (as updated in accordance with paragraph 3.7(i)(ii)) at its cost.

3.8 Additional Works – obligation to complete

Project Co must, at its own cost, procure that:

- (a) Cut 19 Additional Works Completion occurs by the Date for Cut 19 Additional Works Completion;
- (b) Cut 21 Additional Works Completion occurs by the Date for Cut 21 Additional Works Completion;

- (c) Cut 24 Additional Works Completion occurs by the Date for Cut 24 Additional Works Completion;
- (d) Cut 26 Additional Works Completion occurs by the Date for Cut 26 Additional Works Completion; and
- (e) Pavement Additional Works Completion occurs by the Date for Pavement Additional Works Completion.

3.9 Certifying Additional Works Completion

- (a) Clauses 21.1 and 21.2 of the Project Deed apply to the Additional Works, as if references to:
 - (i) "Works" were references to "Additional Works";
 - (ii) "Close Out" were references to "Additional Works Completion";
 - (iii) "Certificate of Close-Out" were references to "Certificate of Additional Works Completion"; and
 - (iv) "Date of Close-Out" were references to "Date of Additional Works Completion".
- (b) Not used.

3.10 Time

- (a) Subject to paragraph 3.10(b) and paragraph 3.10(c), the following clauses of the Project Deed are incorporated by reference into this Modification Order:
 - (i) clause 23.1 ("*Primary obligation*");
 - (ii) clause 23.2 ("*Monitoring progress*");
 - (iii) clause 23.3 ("*Delay to Completion*");
 - (iv) clause 23.4 ("*Delay entitling claim*");
 - (v) clause 23.5 ("*Modifications*");
 - (vi) clause 23.6 ("*Change Notice*"), provided that Project Co's entitlement to compensation in respect of the relevant Extension Event will be nil;
 - (vii) clause 23.7 ("*Conditions precedent to extension*"), except clause 23.7(d) ("*no Acceleration Acceptance Notice*");
 - (viii) clause 23.8 ("*Extension of time*");
 - (ix) clause 23.9 ("*Unilateral extensions*");
 - (x) clause 23.16 ("*Claims barred*");
 - (xi) clause 23.17 ("*Time not at large*"); and
 - (xii) clause 23.18 ("*Force Majeure*"), except clause 23.18(h) ("*Payment during an uninsurable Force Majeure Event*") and 23.18(i) ("*Exceptions*").
- (b) For the purposes of:
 - (i) the clauses incorporated under paragraph 3.10(a); and
 - (ii) in clause 1 ("*Definitions*"), in the definitions of:
 - (A) "Extension Event"; and
 - (B) "D&C Program",

all references to:

- (iii) "D&C Activities" or "Works" must be read as "Additional Works";
 - (iv) "Completion" or "Close-Out" must be read as "Additional Works Completion"; and
 - (v) "Date for Completion" or "Date for Close-Out" must be read as "Date for Additional Works Completion".
- (c) Nothing in this paragraph 3.10 entitles Project Co to make any Claim against the State or otherwise entitle Project Co to payment of any amount.

3.11 Independent Reviewer Fees

For the avoidance of doubt, the costs and expenses of the Independent Reviewer (including the Independent Reviewer's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Reviewer Deed of Appointment) arising out of or in connection with this Modification Order shall be borne solely by Project Co.

4. NO EFFECT ON RIGHTS

- (a) No:
- (i) inspection or review of any Geotechnical Issue by (or on behalf of) the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation;
 - (ii) review of or comments upon any Geotechnical Issue, Geotechnical Investigation, Geotechnical Reports or Remedial Plan by (or on behalf of) the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation; or
 - (iii) failure by (or on behalf of) the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation to detect any non-compliance by Project Co with obligations in accordance with the Project Documents or any Laws,
- will:
- (iv) relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the Project Deed or otherwise according to Law;
 - (v) prejudice the State's rights against Project Co whether under the Project Deed or otherwise according to Law; or
 - (vi) constitute an approval by the State of Project Co's performance of its obligations in accordance with the Project Deed.
- (b) The State does not owe Project Co any duty of care or other obligation (howsoever described):
- (i) to identify Geotechnical Issues; or
 - (ii) to review Geotechnical Issues or Geotechnical Reports, or recommendations or other information provided to the State or otherwise in relation to any Geotechnical Investigation.

5. GENERAL PROVISIONS

The State directs that:

- (a) the amount payable by the State for these Modifications is \$nil;

- (b) the amount payable by Project Co to the State in respect of Savings for these Modifications is \$nil;
- (c) there is no extension to any relevant Date for Close-Out;
- (d) there is no amendment to any Relevant Infrastructure, State Project Document or application of Standards as part of this Modification, other than as set out in clauses 3 and 6; and
- (e) subject to paragraph 6(a), there is no amendment to any relevant warranty given by Project Co under the Project Deed.

6. RELIEF UNDER PROJECT DEED

- (a) The State directs that:
 - (i) subject to paragraph 6(a)(ii), provided that:
 - (A) Project Co complies with its obligations set out in clause 2.2(b) (as amended in accordance with Annexure One) and clause 2.2(f) of the GDSMR to repair adjoining pavement, earthworks, structures and services, subject to the conditions set out in those provisions of the GDSMR; and
 - (B) Project Co complies with the E24 Monitoring and Management Plan,

Project Co's requirement to meet the Handover Condition in respect of E24 will be modified such that the Handover Condition is consistent with E24 in the condition it was in at Close-Out (as detailed in the SGE Pre-Close-Out Report) and as if Project Co had satisfied all other relevant obligations in accordance with the Project Deed. This direction will not relieve Project Co of its obligation to meet the Handover Condition for Assets adjoining E24, including addressing any impact of E24 on adjoining Assets.
 - (ii) despite paragraph 6(a)(i) above, in the event that:
 - (A) there is loss or damage to the Relevant Infrastructure during the Term; or
 - (B) a Defect is identified in E24 during the Term,

and Project Co rebuilds or rectifies E24 as contemplated by paragraph 3.2(c), the Handover Condition requirement in paragraph 6(a)(i) will be modified so that the Handover Condition for E24 will be consistent with the condition immediately post-rectification or post re-build in accordance with all relevant obligations under the Project Deed.
- (b) To the extent Project Co is required to rebuild E24 in accordance with paragraph 3.2(c), the State will give appropriate and reasonable consideration to any proposal by Project Co that any Abatements that have accrued or will accrue and that are attributable to:
 - (i) E24 or the Embankment 24 Associated Infrastructure being non-compliant with the Performance Specification in respect of the failure leading to the direction to rebuild E24; or
 - (ii) the period while Project Co is investigating and undertaking the design and rebuild,

are waived, and will not trigger Major Default (paragraph (a)) or Default Termination Event (paragraph (i)) thresholds.

7. DEFINITIONS

In this Modification Order, the following words have the following meanings:

Additional Works means the Cut 19 Additional Works, the Cut 21 Additional Works, the Cut 24 Additional Works, the Cut 26 Additional Works and the Pavement Additional Works.

Additional Works Completion means Cut 19 Additional Works Completion, Cut 21 Additional Works Completion, Cut 24 Additional Works Completion, Cut 26 Additional Works Completion and Pavement Additional Works Completion or any or all of the foregoing as the context may require or permit.

Certificate of Additional Works Completion means a certificate substantially in the same form as the Certificate of Close-Out but applying to the Additional Works, certifying that Additional Works Completion has been achieved.

Close-Out Rejection Notice means the notice issued by the Independent Reviewer dated 18 August 2022 and titled 'Part 20 – Independent Reviewer's Notice – Close-Out (Work remaining to be performed)'.

Completion Modification Order means the Modification Order issued by the State in accordance with clause 33.1 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion and Outstanding Works' as a result of the Completion Modification Proposal.

Completion Modification Proposal means the Modification Proposal issued by Project Co in accordance with clause 33.7 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion & Outstanding Works'.

Cut 19 means the cutting between chainages 11775 and 12080.

Cut 19 Additional Works means the Works in respect of Cut 19 detailed in Annexure Two.

Cut 19 Additional Works Completion means the stage when the Cut 19 Additional Works have been completed.

Cut 21 means the cutting between chainages 12720 - 13300 (RHS) and 12720 - 13250. (LHS).

Cut 21 Additional Works means the Works in respect of Cut 21 detailed in Annexure Three.

Cut 21 Additional Works Completion means the stage when the Cut 21 Additional Works have been completed.

Cut 21 Monitoring and Management Plan means the plan of that name set out at in document titled "Cut 21 Remediation Validation Monitoring & Management Framework" dated 4 September 2024, including annexed document titled "Cut 21 Right Hand Side – Instrumentation and Monitoring Plan" dated 22 May 2023 (document no. TSRC-ERDEW04-IMP-00001), or such later approved versions.

Cut 24 means the cuttings between chainages 14440 - 14785.

Cut 24 Additional Works means the Works in respect of Cut 24 detailed in Annexure Four.

Cut 24 Additional Works Completion means the stage when the Cut 24 Additional Works have been completed.

Cut 26 means the cutting between chainages 15505-15870.

Cut 26 Additional Works means the Works in respect of Cut 26 detailed in Annexure Five.

Cut 26 Additional Works Completion means the stage when the Cut 26 Additional Works have been completed.

Cut 26 Monitoring and Management Plan means the plan of that name set out in document titled "Cut 26 Remediation Validation Monitoring & Management Framework"

dated 1 December 2023, including annexed document titled "Cut 26 – Batter Face Remediation Works – Instrumentation and Monitoring Plan for Permanent and Temporary Works", dated 28 November 2023 (document no. TSRC-ERDEW05-IMP-00001), or such later approved versions.

Date for Additional Works Completion means the Date for Cut 19 Additional Works Completion, Date for Cut 21 Additional Works Completion, Date for Cut 24 Additional Works Completion, Date for Cut 26 Additional Works Completion or the Date for Pavement Additional Works Completion (as applicable), or all of them if the context requires.

Date for Cut 19 Additional Works Completion means 13 March 2025, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 21 Additional Works Completion means 6 December 2024, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 24 Additional Works Completion means 6 December 2024, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 26 Additional Works Completion means 28 May 2025, as adjusted (if at all) in accordance with this Modification Order.

Date for Pavement Additional Works Completion means 30 September 2025, as adjusted (if at all) in accordance with this Modification Order.

Date of Additional Works Completion means the date stated as the "Date of Additional Works Completion" in the "Certificate of Additional Works Completion".

Embankment 24 or E24 means:

- (a) the embankment created as part of the Works and described as 'Embankment 24' in the Toowoomba Second Range Crossing Project design documentation;
- (b) the immediately surrounding structures to the embankment referred to in paragraph (a) of this definition;
- (c) the earthwork structure on the left hand side of the Tollroad between chainages 15650 – 16300; and
- (d) all monitoring equipment identified in Geotechnical Monitoring and Management Plans.

E24 (Z2) means that portion of E24 West Zone 2, which is the area of Embankment 24 between Ch 16000 and Ch 16250.

E24 Monitoring and Management Plan means the plan of that name set out at in document titled "Embankment 24 Monitoring and Management Plan", dated 9 March 2023, or such later approved version.

Embankment 24 Associated Infrastructure means:

- (a) the immediately surrounding structures to E24;
- (b) the Embankment 24 Buttress; and
- (c) the Monitoring Equipment.

Embankment 24 Buttress means the earthwork structure on the LHS of the Tollroad between chainages 15700 and 16100.

GDSMR means the Geotechnical Design Standard – Minimum Requirements issued by TMR in February 2015.

Geotechnical Investigation has the meaning in paragraph 3.7(a) of this Modification Order.

Geotechnical Issue means any fact, matter or circumstance that may indicate actual or potential:

- (a) issues, problems or concerns with the stability or proper performance of; or
- (b) other geotechnical issues relating to,

any of the following:

- (c) E24;
- (d) Cut 21;
- (e) Cut 26.

Geotechnical Monitoring and Management Plans means:

- (a) the E24 Monitoring and Management Plan;
- (b) the Cut 21 Monitoring and Management Plan; and
- (c) the Cut 26 Monitoring and Management Plan.

IR Pavement Defect means the facts, matters and circumstances as to pavement assessment data, as particularised in row B6 of Schedule 2 of the Close-Out Rejection Notice.

Monitoring Equipment means all monitoring equipment identified in the Geotechnical Monitoring and Management Plans and for the avoidance of doubt, constitutes equipment for the purposes of the definition of Tollroad.

Outstanding Works has the meaning given to that term in the Completion Modification Proposal.

Outstanding Works Completion has the meaning given to that term in the Completion Modification Proposal.

Pavement Additional Works means the Works detailed in Annexure Six.

Pavement Additional Works Completion means the stage when the Pavement Additional Works have been completed.

Remedial Plan has the meaning in paragraph 3.7(i)(i).

SGE Pre-Close-Out Report means the report titled "Biannual Monitoring Report – August 24 – Nexus Delivery for the E24 Management Committee" prepared by Supervising Geotechnical Engineer and dated 6 September 2024.

SRA Defect – Cut 21 means the facts, matters and circumstances as to Cut 21 SRA not reporting an ARL of 4 or above, as particularised in row B3 of Schedule 2 of the Close-Out Rejection Notice.

SRA Defect – Cut 24 means the facts, matters and circumstances as to Cut 24 SRA not reporting an ARL of 4 or above, as particularised in row B4 of Schedule 2 of the Close-Out Rejection Notice.

SRA Defect – Cut 26 means the facts, matters and circumstances as to Cut 26 SRA not reporting an ARL of 4 or above, as particularised in row B40 of Schedule 2 of the Close-Out Rejection Notice.

Supervising Geotechnical Engineer has the meaning given to that term in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

TSRC Geotechnical Issues Monitoring and Management Committee means the committee established in accordance with paragraph 3.5.

TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference means the document of that title.

Yours sincerely

Adam Garvin

State Representative – Toowoomba Second Range Crossing

Annexure One

Amendments to GDSMR for purposes of Close-Out

- (a) Section 2.2(a) shall be applied as if it is deleted and replaced with the following:

"The Embankment shall be stable at all times. The minimum Factor of Safety (FOS) during construction shall be 1.30. Over the long-term, the Embankment must perform in a manner that is consistent with the tolerably safe movement of traffic on the Tollroad, i.e. meeting the criteria of ARL 3 (subject to compliance with the E24 Monitoring and Management Plan), ARL 4 or ARL 5. Regular instrumentation monitoring and the plotting of settlement and pore pressure development over time sufficient to demonstrate compliance with minimum FOS post construction must be provided to TMR."

- (b) Section 2.2(b) shall be applied as if it is deleted and replaced with the following:

"If post-construction in-service movements exceed the limits set in the applicable section of the Austroads Guide to Road Design (AGRD) as noted below, Project Co is required to repair adjoining pavement to the extent required to restore the geometry of the Tollroad to within the Austroad prescribed limits."

- Aquaplaning (Refer to Austroads AGRD Part 5A, 2023)
 - Absolute maximum film depth 4.0mm (intervention level)
 - Design film depth 2.5mm (to provide allowance for deterioration to a maximum of 4mm prior to intervention being required)
- Crossfall rate of rotation (Refer to Austroads AGRD Part 03, 2021)
 - Rate of rotation of 2.5% per second (Desirable maximum)
 - Rate of rotation of 3.0% per second (Absolute maximum)
- Crossfall
 - Design crossfall to be retained to provide the intended design friction demand for the horizontal radius and design speed. (Refer to Austroads AGRD Part 03, 2021)
 - Design crossfall to be retained to provide the design flow widths specified in the project Basis of Design Criteria. TMR's drainage manual (Road Drainage Manual, TMR, Sep 2019) allows for maximum of 1m encroachment into running lanes (2.5m clear traffic width) for an AEP10% event. It is noted that project specific criteria are often more stringent than this requirement.
 - Minimum normal crossfall should be 2.5-3% (Austroads AGRD Part 3, Table 4.2)
- Sight Distance (Refer to Austroads AGRD Part 03, 2021)
 - Stopping & headlight sight distance should be provided in accordance with the AGRD limits for the design speed. A reaction time of 2.0s and coefficient of deceleration of 0.36 would generally be considered the minimum required, however the project Basis of Design Criteria should be consulted to confirm the adopted minimum criteria.
- Level Control (at construction and during operation)

- MRTS30 provides specifications for level control (tolerance) on pavement construction
- MRTS30 specifies the post 12month from practical completion surface deviation should be a maximum of 6mm from a 3m straight edge.
- MRTS30 specifies a Road Roughness of 1.93m/km which is measured at the completion of construction."

Annexure Two

Cut 19 Additional Works

Cut 19 is located between Ch 11775 – 12080 as per the original design documentation.

1. The scope of the Cut 19 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, as certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents which may be amended from time-to-time.
2. The IFC Design Documentation will be substantively based on the detailed design documentation as set out in the document titled "Toowoomba Second Range Crossing Cut 19 Landslides Geotechnical Assessment - Detailed Design" dated 19 July 2024 (document no. B01002-11AB).
3. The review of construction for Cut 19 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 19 Additional Works as complete.

Annexure Three

Cut 21 Additional Works

Cut 21 is located between Ch 12720 – 13300 (RHS) and 12720 – 13250 (LHS) as per the original design documentation.

1. The scope of the Cut 21 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 20 February 2024, as amended from time-to-time.
2. Cut 21 Pavement Repairs CH12800 to 13300
 - a. Site inspection to observe current conditions and site survey,
 - b. Detailed design including review and analysis of existing project information survey and design documents,
 - c. Repair works include:
 - i. site establishment,
 - ii. traffic control where impacting the Tollroad,
 - iii. profiling existing pavement to new design profile,
 - iv. place and compact new surface layers to new design profile,
 - v. temporary and permanent line marking to design,
 - vi. site demobilisation.
 - d. construction completion activities including compliance testing, as constructed survey, as built drawings, ongoing assessment of pavement condition and repairs to meet Performance Specification compliance.
3. The review of construction for Cut 21 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 21 Additional Works as complete.

Annexure Four

Cut 24 Additional Works

Cut 24 is located between Chainages 14440 – 14785 as per the original design documentation.

1. The scope of the Cut 24 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 10 January 2024, as amended from time-to-time.
2. The review of construction for Cut 24 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 24 Additional Works as complete.

Annexure Five

Cut 26 Additional Works

Cut 26 is located between Ch 15505-15870 as per the original design documentation.

1. The scope of the Cut 26 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 22 March 2024, as amended from time-to-time.
2. Pavement Repairs Ch15500 – 15800
 - a. Pavement rectification of any deformed and damaged infrastructure including pavements as a result of permanent repairs and temporary works conducted to rectify the Cut 26 damages.
 - b. Ongoing infrastructure condition assessment including but not limited to pavements to meet Performance Specification compliance.
3. The review of construction for Cut 26 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 26 Additional Works as complete.

Annexure Six

Pavement Additional Works

- The scope of Pavement Additional Works will be subject of field validations to confirm the specific location and type of Defect, prior to repair.
- Where chainages in the data do not align with field results if there is a pavement Defect within the vicinity, it will be taken to be part of the Pavement Additional Works scope.
- The D&C Subcontractor will undertake the repair of the Defects subsisting at the locations shown in the indicative chainages listed in Table 1 and 2 below.

Table 1 - Quantity and Type of Defect by 100m Pavement Sections

Tollroad Section	Lane	Texture Depth	Roughness	Rutting
Western Section	EB	8	3	4
Western Section	WB	3	0	3
East/Central Section	EB (LL)	44	0	0
East/Central Section	EB (RL)	15	0	0
East/Central Section	WB (LL)	80	0	0
East/Central Section	WB (RL)	12	0	0
TOTAL 100M Sections	-	162	3	7

Table 2 - Location of Defects by Indicative Chainages (100m Pavement Sections)

Western Section – EB	Western Section – WB	East/Central Section – EB (RL)	East/Central Section – WB (LL)	East/Central Section – WB (RL)	East/Central Section – EB (LL)
27.5 - 27.6	28.7 - 28.8	0.4 - 0.5	0 - 0.1	16.9 - 17	6.7 - 6.8
27.6 - 27.7	31.5 - 31.6	0.8 - 0.9	0.1 - 0.2	17.4 - 17.5	8.6 - 8.7
28.7 - 28.8	40.2 - 40.3	18.7 - 18.8	0.2 - 0.3	18.1 - 18.2	10.3 - 10.4
28.8 - 28.9	30.0 - 30.1	19.3 - 19.4	0.4 - 0.5	18.4 - 18.5	11.5 - 11.6
31.6 - 31.7	30.1 - 30.2	19.4 - 19.5	1.1 - 1.2	19.1 - 19.2	11.7 - 11.8
33 - 33.1	40.6 - 40.7	19.6 - 19.7	1.6 - 1.7	20.6 - 20.7	11.9 - 12
34.3 - 34.4		21 - 21.1	2.2 - 2.3	20.7 - 20.8	12 - 12.1
36.7 - 36.8		22 - 22.1	4 - 4.1	20.9 - 21	15 - 15.1
30.2 - 30.3		23.1 - 23.2	4.3 - 4.4	21.2 - 21.3	15.1 - 15.2
35.6 - 35.7		23.5 - 23.6	4.8 - 4.9	25 - 25.1	16.5 - 16.6
40.2 - 40.3		23.6 - 23.7	4.9 - 5	25.2 - 25.3	16.6 - 16.7
29.7 - 29.8		25.8 - 25.9	5.7 - 5.8	27 - 27.1	17.1 - 17.2
34.7 - 34.8		25.9 - 26	8.3 - 8.4		17.2 - 17.3

37.2 – 37.3		26.3 - 26.4	8.4 - 8.5		17.6 - 17.7
39.1 – 39.2		27.1 - 27.2	8.7 - 8.8		17.7 - 17.8
			8.8 - 8.9		18.1 - 18.2
			8.9 - 9		18.2 - 18.3
			9.8 - 9.9		18.3 - 18.4
			9.9 - 10		18.7 - 18.8
			10.2 - 10.3		19.1 - 19.2
			11.5 - 11.6		19.2 - 19.3
			11.7 - 11.8		19.3 - 19.4
			11.9 - 12		19.4 - 19.5
			12.3 - 12.4		19.5 - 19.6
			12.4 - 12.5		20.1 - 20.2
			12.5 - 12.6		20.5 - 20.6
			13.2 - 13.3		20.6 - 20.7
			13.7 - 13.8		21.1 - 21.2
			13.8 - 13.9		21.3 - 21.4
			13.9 - 14		21.6 - 21.7
			14.5 - 14.6		22.1 - 22.2
			14.6 - 14.7		22.2 - 22.3
			14.8 - 14.9		22.3 - 22.4
			15 - 15.1		22.5 - 22.6
			15.1 - 15.2		22.6 - 22.7
			15.2 - 15.3		23.2 - 23.3
			16.4 - 16.5		23.6 - 23.7
			16.8 - 16.9		23.8 - 23.9
			17.1 - 17.2		25.2 - 25.3
			17.2 - 17.3		25.3 - 25.4
			17.4 - 17.5		26 - 26.1
			17.5 - 17.6		26.4 - 26.5
			17.6 - 17.7		26.6 - 26.7
			17.9 - 18		27 - 27.1
			18.1 - 18.2		

			18.3 - 18.4		
			18.3 - 18.4		
			18.4 - 18.5		
			18.6 - 18.7		
			18.7 - 18.8		
			18.8 - 18.9		
			18.9 - 19		
			19 - 19.1		
			19 - 19.1		
			19.1 - 19.2		
			19.2 - 19.3		
			19.4 - 19.5		
			19.6 - 19.7		
			19.7 - 19.8		
			19.9 - 20		
			20 - 20.1		
			20.1 - 20.2		
			20.2 - 20.3		
			20.3 - 20.4		
			20.4 - 20.5		
			20.6 - 20.7		
			20.7 - 20.8		
			20.8 - 20.9		
			21.6 - 21.7		
			21.9 - 22		
			22.6 - 22.7		
			23.9 - 24		
			25.2 - 25.3		
			26 - 26.1		
			26.1 - 26.2		
			26.2 - 26.3		
			26.3 - 26.4		

			26.4 - 26.5		
			26.5 - 26.6		
			26.7 - 26.8		
			26.9 - 27		
			27 - 27.1		

State Side Deed

Schedule 4

Close-Out Modification (D&C)

[X] 2024

Attention: Stewart Walls
D&C Subcontractor Representative
Project Director
PO Box 124
Harlaxton Qld 4350

BY TEAMBINDER

Dear Jose

MODIFICATION ORDER - CLAUSE 33.1 OF THE D&C SUBCONTRACT – CLOSE-OUT AND OUTSTANDING WORKS COMPLETION

In this letter, capitalised terms not defined in section 7 adopt the definitions used in the D&C Subcontract between Nexus Infrastructure Pty Ltd (as trustee) and the unincorporated joint venture between Acciona Infrastructure Australia Pty Ltd ACN 140 915 251 and Ferrovial Agroman (Australia) Pty Ltd ACN 150 820 116 dated 21 August 2015.

1. BACKGROUND TO MODIFICATION ORDER

- (a) On or around 6 September 2019, Project Co issued a Modification Proposal to the State pursuant to clause 33.7 of the Project Deed (being the Completion Modification Proposal). The Completion Modification Proposal proposed, among other things, that Project Co and the State would instruct the Independent Reviewer:
 - (i) to disregard the Outstanding Works for the purposes of determining whether or not Tollroad Completion had occurred; and
 - (ii) that the Outstanding Works must be completed in order for Project Co to achieve:
 - (A) Close-Out (under the Project Deed); and
 - (B) Outstanding Works Completion.
- (b) On or around the same date, the State issued a Modification Order to Project Co pursuant to clause 33.1 of the Project Deed (being the Completion Modification Order), directing Project Co to undertake the Modification, as proposed in the Completion Modification Proposal.
- (c) In light of the Completion Modification Order, the Independent Reviewer was instructed to disregard the Outstanding Works for the purposes of determining whether or not Tollroad Completion had occurred. Following that instruction, the Independent Reviewer certified that, disregarding the Outstanding Works, Tollroad Completion had occurred on 31 July 2019.
- (d) Some of the Outstanding Works related to E24 and, specifically, concerned apparent geotechnical design deficiencies in the construction of E24 (Z2).
- (e) The D&C Subcontractor has advised, and Project Co accepts, that, as at the date of this Modification Order, subject to and upon issuing this Modification Order:
 - (i) E24 (Z2) is Fit For Purpose; and
 - (ii) there are no known Defects in respect of E24 (Z2),

subject to ongoing monitoring of E24 in accordance with the E24 Monitoring and Management Plan.

- (f) Project Co and the D&C Subcontractor agree that the Outstanding Works relevant to E24 (Z2) be addressed as set out in this Modification Order.

2. **MODIFICATION ORDER**

This Modification Order is issued by Project Co in accordance with clause 33.1 of the D&C Subcontract. The purpose of the Modification is to enable the Independent Reviewer to determine whether Close-Out and Outstanding Works Completion have been achieved at or about the date of this Modification Order, by the Independent Reviewer:

- (a) taking into account the relief from compliance with certain requirements of the Performance Specification as set out in this Modification Order; and
- (b) disregarding certain other matters which may prevent the achievement of Close-Out and Outstanding Works Completion in making those determinations.

The information required to be addressed pursuant to clause 33.1 of the D&C Subcontract is set out in the Modification Order.

This Modification Order is a D&C Project Document for the purposes of the D&C Subcontract.

3. **ELEMENTS OF MODIFICATION**

Scope of Modification: The Modification issued by Project Co under clause 33.1 is for the following:

3.1 **Independent Reviewer certifications**

- (a) Project Co must instruct (and must procure that the State instructs) the Independent Reviewer:
 - (i) when determining whether Close-Out and Outstanding Works Completion have been achieved, the Independent Reviewer will have regard to paragraph 3.2 below, which provides relief from compliance with certain requirements of the Performance Specification;
 - (ii) that the following matters (which may otherwise prevent the achievement of Close-Out) will be disregarded by the Independent Reviewer for the purposes of determining whether or not Close-Out has been achieved pursuant to clause 21.1(c)(ii) of the Project Deed:
 - (A) the Additional Works, and the facts, matters and circumstances giving rise to those Additional Works;
 - (B) clauses 2.2(a), 2.2(h) and 2.2(f) of the GDSMR;
 - (C) the SRA Defect Cut - 21, the SRA Defect – Cut 24 and the SRA Defect Cut - 26; and
 - (D) the IR Pavement Defect; and
 - (iii) if the Independent Reviewer is otherwise satisfied that Project Co has done everything which the Project Deed requires Project Co to do prior to, or as a condition precedent to, Close-Out, to issue certificates of Close-Out and Outstanding Works Completion (copies of which Project Co must promptly provide to the D&C Subcontractor).

3.2 **Compliance with the Performance Specification**

- (a) To the extent the Performance Specification incorporates requirements to comply with the GDSMR (but only insofar as it relates to the Works at E24) :

- (i) subject to paragraph 3.2(c), the requirements of clauses 2.2(a) and 2.2(b) of the GDSMR are to be applied as if those requirements were amended in accordance with Annexure One ;
 - (ii) notwithstanding clauses 1(g) of the GDSMR and the references in clauses 2.3(b)(i), (b)(v) and (b)(vi) of the GDSMR to two-dimensional modelling and analysis, 3D modelling based on "Finite Difference Analysis" using FLAC 3D software is deemed an acceptable method of analysis; and
 - (iii) subject to paragraph 3.2(b) and paragraph 3.2(c), the requirements of the first paragraph of clause 2.4 of the GDSMR are waived.
- (b) After Close-Out has been achieved, the presence of any colluvial slope wash materials must not lead to:
 - (i) the SRA score for E24 being assessed as an ARL 1 or 2; and
 - (ii) non-compliance with the serviceability requirements of the GDSMR, as set out in clause 2.2(f) of the GDSMR.
- (c) Notwithstanding paragraphs 3.2(a) and 3.2(b), above, without limiting any provision of the D&C Subcontract (including clause 22.1 or clause 37.3):
 - (i) in the event that there is an unexpected and observable movement on the shear plane at E24 detected through physical observation or monitoring data reported by the Supervising Geotechnical Engineer, the parties will instruct the Supervising Geotechnical Engineer to undertake increased observation and analysis (including through increased frequency of reporting of monitoring data and analysis);
 - (ii) using the monitoring data and analysis provided by the Supervising Geotechnical Engineer, the voting members of the TSRC Geotechnical Issues Monitoring and Management Committee will meet in good faith to discuss what each member considers to be the appropriate course of action to manage any identified risks arising from the movement, taking into account factors including safety, efficiency of process and recent developments in design and construction of earthworks structures similar to E24;
 - (iii) the State must consider the discussions and recommendations of the TSRC Geotechnical Issues Monitoring and Management Committee before taking the action in paragraph (iv) below; and
 - (iv) if the State requires Project Co to rebuild E24 in accordance with clauses 37.2 or 22.1 of the Project Deed:
 - (A) the D&C Subcontractor bears the risk of loss or damage to E24 for the purposes of clause 37.1 of the D&C Subcontract; and
 - (B) the D&C Subcontractor must in accordance with clauses 37.2 or 22.1 of the D&C Subcontract, rebuild E24 in accordance with the requirements of the D&C Subcontract, including the first paragraph of clause 2.4 of the GDSMR.
- (d) Subject to paragraph 3.2(c)(iii), the D&C Subcontractor acknowledges that the State retains full discretion to exercise its rights under the Project Deed in the event that there is unexpected and observable movement on the shear plane.

3.3 **Compliance with Geotechnical Monitoring and Management Plans**

- (a) The Geotechnical Monitoring and Management Plans are Project Plans for the purposes of the D&C Subcontract.
- (b) The D&C Subcontractor must:

- (i) comply with the Geotechnical Monitoring and Management Plans;
 - (ii) undertake the works required to be performed by the D&C Subcontractor as set out in the Geotechnical Monitoring and Management Plans; and
 - (iii) ensure that its Subcontractors undertake the works required to be performed by them as set out in the Geotechnical Monitoring and Management Plans.
- (c) The D&C Subcontractor must update the Geotechnical Monitoring and Management Plans at the time required by, and in accordance with the process referred to in, the Geotechnical Monitoring and Management Plans and the D&C Subcontract.

3.4 **Monitoring Equipment**

To the extent that a Geotechnical Monitoring and Management Plan requires Monitoring Equipment to still be in service or available past the Expiry Date:

- (a) the Monitoring Equipment will constitute equipment for the purposes of the definition of "Tollroad"; and
- (b) the D&C Subcontractor must handover the Monitoring Equipment in good working order and otherwise in accordance with clause 27.2 of the D&C Subcontract.

3.5 **TSRC Geotechnical Issues Monitoring and Management Committee**

- (a) Project Co advises the D&C Subcontractor that it is establishing the TSRC Geotechnical Issues Monitoring and Management Committee. Project Co notes that it may be that for this purpose the existing E24 Monitoring and Management Committee members commence to act as the TSRC Geotechnical Issues Monitoring and Management Committee.
- (b) The D&C Subcontractor:
 - (i) must jointly with Project Co and the State, appoint the Supervising Geotechnical Engineer at the D&C Subcontractor's cost;
 - (ii) must take part in the TSRC Geotechnical Issues Monitoring and Management Committee, together with the State and Project Co, as voting members;
 - (iii) acknowledges that the O&M Subcontractor will be entitled to observer membership of the TSRC Geotechnical Issues Monitoring and Management Committee as a non-voting member;
 - (iv) acknowledges that the TSRC Geotechnical Issues Monitoring and Management Committee will be governed in accordance with the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference, and must comply with those TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference accordingly; and
 - (v) acknowledges that the TSRC Geotechnical Issues Monitoring and Management Committee is advisory in nature, and its remit is set out in the manner described in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

3.6 **Process for identifying Geotechnical Issues**

- (a) Project Co notes that Geotechnical Issues may be identified or raised by the State, the Supervising Geotechnical Engineer, Project Co or the D&C Subcontractor.
- (b) Where:
 - (i) Project Co or the D&C Subcontractor becomes aware of a Geotechnical Issue, Project Co or the D&C Subcontractor (as applicable) will promptly notify the other, and each of the State, the Supervising Geotechnical Engineer and the O&M Subcontractor; and

- (ii) the Supervising Geotechnical Engineer is notified or becomes aware of a Geotechnical Issue – Project Co will procure that the Supervising Geotechnical Engineer notifies the D&C Subcontractor.
- (c) Upon receiving notice of any Geotechnical Issue, the D&C Subcontractor:
 - (i) must promptly raise the Geotechnical Issue with the TSRC Geotechnical Issues Monitoring and Management Committee;
 - (ii) subject to paragraph 3.6(c)(iii), may elect, in its absolute discretion, to conduct within a reasonable period of time a Geotechnical Investigation in accordance with paragraph 3.7, in respect of the Geotechnical Issue the subject of the notice; and
 - (iii) must, if directed to do so by Project Co, conduct a Geotechnical Investigation in accordance with paragraph 3.7, in respect of the Geotechnical Issue the subject of the direction.
- (d) Any notice issued by the D&C Subcontractor in accordance with this paragraph 3.6 must comply with the requirements of clause 57.1 of the Project Deed (as if the D&C Subcontractor was Project Co).

3.7 **Geotechnical Investigation**

- (a) Project Co may (or must, if directed to do so by the State) direct the D&C Subcontractor to further investigate a Geotechnical Issue notified or identified as contemplated by paragraph 3.6(a) (**Geotechnical Investigation**) in accordance with this paragraph 3.7.
- (b) If the D&C Subcontractor undertakes a Geotechnical Investigation, it must engage such experts as Project Co considers are appropriate to consider, investigate and report on the Geotechnical Issue. Any expert appointed to conduct a Geotechnical Investigation must be an independent person with appropriate skills having regard to the nature of the Geotechnical Issue.
- (c) The D&C Subcontractor must ensure (acting reasonably) that all information, access and assistance as is required for each Geotechnical Investigation (including any further investigations undertaken by Project Co or required by the State as contemplated by paragraph 3.7(e)) is promptly provided to Project Co, the State and any appointed expert.
- (d) The D&C Subcontractor must report to Project Co on the outcome of the Geotechnical Investigation and the recommendations of the relevant expert (**Geotechnical Report**).
- (e) Upon consideration of any Geotechnical Report, Project Co may (acting reasonably) direct further action or investigation with respect to the Geotechnical Issue in accordance with these paragraphs 3.6 and 3.7 or in accordance with the D&C Subcontract, including by forming the view that a Defect exists and requires rectification.
- (f) Any further action directed by Project Co in accordance with paragraph 3.7(e) will not constitute a Modification Order or entitle the D&C Subcontractor to bring any Claim against Project Co.
- (g) The D&C Subcontractor must provide a copy of any Geotechnical Report to the TSRC Geotechnical Issues Monitoring and Management Committee.
- (h) The D&C Subcontractor must bear the costs of any Geotechnical Investigation.
- (i) Promptly following completion of each Geotechnical Investigation, the D&C Subcontractor must at its cost:
 - (i) prepare a remedial plan setting out the manner in which the D&C Subcontractor will address any Defects identified by the State or Project Co (**Remedial Plan**) and provide a copy of the Remedial Plan to Project Co; and

- (ii) update the Remedial Plan to reflect any comments by Project Co or the State (acting reasonably);
- (iii) implement such Remedial Plan (as updated in accordance with paragraph 3.7(i)(ii)) at its cost.

3.8 **Additional Works – obligation to complete**

The D&C Subcontractor must, at its own cost, procure that:

- (a) Cut 19 Additional Works Completion occurs by the Date for Cut 19 Additional Works Completion ;
- (b) Cut 21 Additional Works Completion occurs by the Date for Cut 21 Additional Works Completion ;
- (c) Cut 24 Additional Works Completion occurs by the Date for Cut 24 Additional Works Completion;
- (d) Cut 26 Additional Works Completion occurs by the Date for Cut 26 Additional Works Completion; and
- (e) Pavement Additional Works Completion occurs by the Date for Pavement Additional Works Completion.

3.9 **Certifying Additional Works Completion**

Clauses 21.1 and 21.2 of the D&C Subcontract apply to the Additional Works, as if references to:

- (a) "Works" were references to "Additional Works";
- (b) "Close Out" were references to "Additional Works Completion";
- (c) "Certificate of Close-Out" were references to "Certificate of Additional Works Completion"; and
- (d) "Date of Close-Out" were references to "Date of Additional Works Completion".

3.10 **Time**

- (a) Subject to paragraph 3.10(b) and paragraph 3.10(c), the following clauses of the D&C Subcontract are incorporated by reference into this Modification Order:
 - (i) clause 23.1 ("*Primary obligation*");
 - (ii) clause 23.2 ("*Monitoring progress*");
 - (iii) clause 23.3 ("*Delay to Completion*");
 - (iv) clause 23.4 ("*Delay entitling claim*");
 - (v) clause 23.5 ("*Modifications*");
 - (vi) clause 23.6 ("*Change Notice*"), provided that the D&C Subcontractor's entitlement to compensation in respect of the relevant Extension Event will be nil;
 - (vii) clause 23.7 ("*Conditions precedent to extension*"), except clause 23.7(d) ("*no Acceleration Acceptance Notice*");
 - (viii) clause 23.8 ("*Extension of time*");
 - (ix) clause 23.9 ("*Unilateral extensions*");

- (x) clause 23.16 ("*Claims barred*");
 - (xi) clause 23.17 ("*Time not at large*");
 - (xii) clause 23.18 ("*Force Majeure*"), except clause 23.18(h) ("*Payment during an uninsurable Force Majeure Event*") and 23.18 (i) ("*Exceptions*"); and
 - (xiii) clause 41A ("*Linked Claims and Linked Disputes*").
- (b) For the purposes of:
- (i) the clauses incorporated under paragraph 3.10(a); and
 - (ii) in clause 1 ("*Definitions*"), in the definitions of:
 - (A) "Extension Event"; and
 - (B) "D&C Program",
- all references to:
- (iii) "D&C Activities" or "Works" must be read as "Additional Works";
 - (iv) "Completion" or "Close-Out" must be read as "Additional Works Completion"; and
 - (v) "Date for Completion" or "Date for Close-Out" must be read as "Date for Additional Works Completion".
- (c) Nothing in this paragraph 3.10 entitles the D&C Subcontractor to make any Claim against Project Co or otherwise entitle the D&C Subcontractor to payment of any amount.

3.11 **Independent Reviewer Fees**

For the avoidance of doubt, the costs and expenses of the Independent Reviewer (including the Independent Reviewer's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Reviewer Deed of Appointment) arising out of or in connection with this Modification Order shall be borne solely by the D&C Subcontractor.

3.12 **Fitness for Purpose**

To the extent that the Additional Works do not form part of the Outstanding Works, the Fit for Purpose warranty in clauses 5.2(a) and (b) of the D&C Subcontract will be given in respect of those Additional Works:

- (a) on the Date of Additional Works Completion for the relevant item of Additional Works; and
- (b) as if references to:
 - (i) "the Date of Tollroad Completion" in that warranty were references to the "the Date of Additional Works Completion in respect of that item of Additional Works"; and
 - (ii) "the Tollroad and the Maintained Off-Tollroad Facilities" in that warranty were references to the relevant item of Additional Works.

4. **NO EFFECT ON RIGHTS**

- (f) No:
 - (i) inspection or review of any Geotechnical Issue by (or on behalf of) Project Co, the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation;

- (ii) review of or comments upon any Geotechnical Issue, Geotechnical Investigation, Geotechnical Reports or Remedial Plan by (or on behalf of) Project Co or the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation; or
- (iii) failure by (or on behalf of) Project Co or the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation to detect any non-compliance by the D&C Subcontractor with obligations in accordance with the D&C Project Documents or any Laws,

will:

- (iv) relieve the D&C Subcontractor from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the D&C Subcontract or otherwise according to Law;
 - (v) prejudice Project Co's rights against the D&C Subcontractor whether under the D&C Subcontract or otherwise according to Law; or
 - (vi) constitute an approval by Project Co of the D&C Subcontractor's performance of its obligations in accordance with the D&C Subcontract.
- (g) Project Co does not owe the D&C Subcontractor any duty of care or other obligation (howsoever described):
- (i) to identify Geotechnical Issues; or
 - (ii) to review Geotechnical Issues or Geotechnical Reports, or recommendations or other information provided to Project Co or otherwise in relation to any Geotechnical Investigation.

5. **GENERAL PROVISIONS**

Project Co directs that:

- (a) the amount payable by Project Co for these Modifications is \$nil;
- (b) the amount payable by the D&C Subcontractor to Project Co in respect of Savings for these Modifications is \$nil;
- (c) there is no extension to any relevant Date for Close-Out;
- (d) there is no amendment to any Relevant Infrastructure, D&C Project Document or application of Standards as part of this Modification, other than as set out in clause 3 and 6; and
- (e) subject to paragraph 6(a), there is no amendment to any relevant warranty given by the D&C Subcontractor under the D&C Subcontract.

6. **RELIEF UNDER D&C SUBCONTRACT**

(a) Project Co directs that:

- (i) subject to paragraph 6(a)(ii), provided that:
 - (A) the D&C Subcontractor complies with its obligations set out in clause 2.2(b) (as amended in accordance with Annexure One) and clause 2.2(f) of the GDSMR to repair adjoining pavement, earthworks, structures and services, subject to the conditions set out in those provisions of the GDSMR; and
 - (B) the D&C Subcontractor complies with the E24 Monitoring and Management Plan,

the D&C Subcontractor's requirement to meet the Handover Condition in respect of E24 will be modified such that the Handover Condition is consistent with E24 in the condition it was in at Close-Out (as detailed in the SGE Pre-Close-Out Report) and as if the D&C Subcontractor had satisfied all other relevant obligations in accordance with the D&C Subcontract. This direction will not relieve the D&C Subcontractor of its obligation to meet the Handover Condition for Assets adjoining E24, including addressing any impact of E24 on adjoining Assets;

(ii) despite paragraph 6(a)(i) above, in the event that:

(A) there is loss or damage to the Relevant Infrastructure during the Term;
or

(B) a Defect is identified in E24 during the Term;

and the D&C Subcontractor rebuilds or rectifies E24 as contemplated by paragraph 3.2(c), the Handover Condition requirement in paragraph 6(a)(i) will be modified so that the Handover Condition for E24 will be consistent with the condition immediately post-rectification or post re-build in accordance with all relevant obligations under the D&C Subcontract.

(b) To the extent the D&C Subcontractor is required to rebuild E24 in accordance with paragraph 3.2(c), Project Co will procure that the State will give appropriate and reasonable consideration to any proposal by the D&C Subcontractor for any Abatements that have accrued or will accrue and that are attributable to:

(i) E24 or the Embankment 24 Associated Infrastructure being non-compliant with the Performance Specification in respect of the failure leading to the direction to rebuild E24; or

(ii) the period while the D&C Subcontractor is investigating and undertaking the design and rebuild:

are waived, and will not trigger D&C Major Default (paragraph (o) (insofar as it relates to a 'Major Default' (as defined in the Project Deed) listed in paragraph (a) of that definition) or D&C Default Termination Event (paragraph (aa) (insofar as it relates to a 'Default Termination Event' (as defined in the Project Deed) listed in paragraph (i) of that definition).

7. **MODIFICATION ORDER (STATE)**

(a) The D&C Subcontractor acknowledges that the State issued the Modification Order (State) to Project Co on or about the date of this Modification Order.

(b) The D&C Subcontractor acknowledges and agrees that if, after the date of this Modification Order, the Modification Order (State) is determined to be void and/or unenforceable, then this Modification Order will be void and/or unenforceable.

8. **DEFINITIONS**

In this Modification Order, the following words have the following meanings:

Additional Works means the Cut 19 Additional Works, the Cut 21 Additional Works, the Cut 24 Additional Works, the Cut 26 Additional Works, and the Pavement Additional Works.

Additional Works Completion means Cut 19 Additional Works Completion, Cut 21 Additional Works Completion, Cut 24 Additional Works Completion, Cut 26 Additional Works Completion and Pavement Additional Works Completion, or any or all of the foregoing as the context may require or permit.

Certificate of Additional Works Completion means a certificate substantially in the same form as the Certificate of Close Out but applying to the Additional Works, certifying that Additional Works Completion has been achieved.

Close-Out Rejection Notice means the notice issued by the Independent Reviewer dated 18 August 2022 and titled 'Part 20 – Independent Reviewer's Notice – Close-Out (Work remaining to be performed)'.

Completion Modification Order means the Modification Order issued by the State in accordance with clause 33.1 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion and Outstanding Works' as a result of the Completion Modification Proposal.

Completion Modification Proposal means the Modification Proposal issued by Project Co in accordance with clause 33.7 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion & Outstanding Works'.

Cut 19 means the cutting between chainages 11775 and 12080.

Cut 19 Additional Works means the Works in respect of Cut 19 detailed in Annexure Two.

Cut 19 Additional Works Completion means the stage when the Cut 19 Additional Works have been completed.

Cut 21 means the cutting between chainages 12720 - 13300 (RHS) and 12720 - 13250. (LHS).

Cut 21 Additional Works means the Works in respect of Cut 21 detailed in Annexure Three.

Cut 21 Additional Works Completion means the stage when the Cut 21 Additional Works have been completed.

Cut 21 Monitoring and Management Plan means the plan of that name set out at in document titled "Cut 21 Remediation Validation Monitoring & Management Framework" dated 4 September 2024, including annexed document titled "Cut 21 Right Hand Side – Instrumentation and Monitoring Plan" dated 22 May 2023 (document no. TSRC-ERDEW04-IMP-00001), or such later approved versions.

Cut 24 means the cuttings between chainages 14440 - 14785.

Cut 24 Additional Works means the Works in respect of Cut 24 detailed in Annexure Four.

Cut 24 Additional Works Completion means the stage when the Cut 24 Additional Works have been completed.

Cut 26 means the cutting between chainages 15505 - 15870.

Cut 26 Additional Works means the Works in respect of Cut 26 detailed in Annexure Five.

Cut 26 Additional Works Completion means the stage when the Cut 26 Additional Works have been completed.

Cut 26 Monitoring and Management Plan means the plan of that name set out in document titled "Cut 26 Remediation Validation Monitoring & Management Framework" dated 1 December 2023, including annexed document titled "Cut 26 – Batter Face Remediation Works – Instrumentation and Monitoring Plan for Permanent and Temporary Works", dated 28 November 2023 (document no. TSRC-ERDEW05-IMP-00001), or such later approved versions.

Date for Additional Works Completion means the Date for Cut 19 Additional Works Completion, Date for Cut 21 Additional Works Completion, Date for Cut 24 Additional Works Completion, Date for Cut 26 Additional Works Completion or the Date for Pavement Additional Works Completion (as applicable), or all of them if the context requires.

Date for Cut 19 Additional Works Completion means 13 March 2025, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 21 Additional Works Completion means 6 December 2024, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 24 Additional Works Completion means 6 December 2024, as adjusted (if at all) in accordance with this Modification Order.

Date for Cut 26 Additional Works Completion means 28 May 2025, as adjusted (if at all) in accordance with this Modification Order.

Date for Pavement Additional Works Completion means 30 September 2025, as adjusted (if at all) in accordance with this Modification Order.

Date of Additional Works Completion means the date stated as the "Date of Additional Works Completion" in the "Certificate of Additional Works Completion".

Embankment 24 or E24 means:

- (a) the embankment created as part of the Works and described as 'Embankment 24' in the Toowoomba Second Range Crossing Project design documentation;
- (b) the immediately surrounding structures to the embankment referred to in paragraph (a) of this definition;
- (c) the earthwork structure on the left hand side of the Tollroad between chainages 15650 - 16300; and
- (d) all monitoring equipment identified in Geotechnical Monitoring and Management Plans.

E24 (Z2) means that portion of E24 West Zone 2, which is the area of Embankment 24 between Ch 16000 and Ch 16250.

E24 Monitoring and Management Plan means the plan of that name set out at in document titled "Embankment 24 Monitoring and Management Plan", dated 9 March 2023, or such later approved version.

Embankment 24 Associated Infrastructure means:

- (a) the immediately surrounding structures to E24 ;
- (b) the Embankment 24 Buttress; and
- (c) the Monitoring Equipment.

Embankment 24 Buttress means the earthwork structure on the LHS of the Tollroad between chainages 15700 and 16100.

GDSMR means the Geotechnical Design Standard – Minimum Requirements issued by TMR in February 2015.

Geotechnical Investigation has the meaning in paragraph 3.7(a) of this Modification Order.

Geotechnical Issue means any fact, matter or circumstance that may indicate actual or potential:

- (a) issues, problems or concerns with the stability or proper performance of; or
- (b) other geotechnical issues relating to,

any of the following:

- (c) E24 ;

(d) Cut 21;

(e) Cut 26.

Geotechnical Monitoring and Management Plans means:

(a) the E24 Monitoring and Management Plan;

(b) the Cut 21 Monitoring and Management Plan; and

(c) the Cut 26 Monitoring and Management Plan.

IR Pavement Defect means the facts, matters and circumstances as to pavement assessment data, as particularised in row B4 of Schedule 2 of the Close-Out Rejection Notice.

Modification Order (State) means the Modification Order entitled ' Modification Order - Clause 33.1 of the Project Deed – Close-Out And Outstanding Works Completion' issued by the State in accordance with clause 33.1 of the Project Deed on or about the date of this Modification Order.

Monitoring Equipment means all monitoring equipment identified in the Geotechnical Monitoring and Management Plans and for the avoidance of doubt, constitutes equipment for the purposes of the definition of Tollroad.

Outstanding Works has the meaning given to that term in the Completion Modification Proposal.

Outstanding Works Completion has the meaning given to that term in the Completion Modification Proposal.

Pavement Additional Works means the Works detailed in Annexure Six.

Pavement Additional Works Completion means the stage when the Pavement Additional Works have been completed.

Remedial Plan has the meaning in paragraph 3.7(i)(i).

SGE Pre-Close-Out Report means the report titled "Biannual Monitoring Report – August 24 – Nexus Delivery for the E24 Management Committee" prepared by Supervising Geotechnical Engineer and dated 6 September 2024.

SRA Defect – Cut 21 means the facts, matters and circumstances as to Cut 21 SRA not reporting an ARL of 4 or above, as particularised in row B3 of Schedule 2 of the Close-Out Rejection Notice.

SRA Defect – Cut 24 means the facts, matters and circumstances as to Cut 24 SRA not reporting an ARL of 4 or above, as particularised in row B4 of Schedule 2 of the Close-Out Rejection Notice.

SRA Defect – Cut 26 means the facts, matters and circumstances as to Cut 26 SRA not reporting an ARL of 4 or above, as particularised in row B40 of Schedule 2 of the Close-Out Rejection Notice.

Supervising Geotechnical Engineer has the meaning given to that term in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

TSRC Geotechnical Issues Monitoring and Management Committee means the committee established in accordance with paragraph 3.5.

TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference means the document of that title.

Yours sincerely

James Thewlis

Project Co Representative – Toowoomba Second Range Crossing

Annexure One

Amendments to GDSMR for purposes of Close-Out

- (a) Section 2.2(a) shall be applied as if it is deleted and replaced with the following:

"The Embankment shall be stable at all times. The minimum Factor of Safety (FOS) during construction shall be 1.30. Over the long-term, the Embankment must perform in a manner that is consistent with the tolerably safe movement of traffic on the Tollroad, i.e. meeting the criteria of ARL 3 (subject to compliance with the E24 Monitoring and Management Plan), ARL 4 or ARL 5. Regular instrumentation monitoring and the plotting of settlement and pore pressure development over time sufficient to demonstrate compliance with minimum FOS post construction must be provided to TMR."

- (b) Section 2.2(b) shall be applied as if it is deleted and replaced with the following:

"If post-construction in-service movements exceed the limits set in the applicable section of the Austroads Guide to Road Design (AGRD) as noted below, Project Co is required to repair adjoining pavement to the extent required to restore the geometry of the Tollroad to within the Austroad prescribed limits."

- Aquaplaning (Refer to Austroads AGRD Part 5A, 2023)
 - Absolute maximum film depth 4.0mm (intervention level)
 - Design film depth 2.5mm (to provide allowance for deterioration to a maximum of 4mm prior to intervention being required)
- Crossfall rate of rotation (Refer to Austroads AGRD Part 03, 2021)
 - Rate of rotation of 2.5% per second (Desirable maximum)
 - Rate of rotation of 3.0% per second (Absolute maximum)
- Crossfall
 - Design crossfall to be retained to provide the intended design friction demand for the horizontal radius and design speed. (Refer to Austroads AGRD Part 03, 2021)
 - Design crossfall to be retained to provide the design flow widths specified in the project Basis of Design Criteria. TMR's drainage manual (Road Drainage Manual, TMR, Sep 2019) allows for maximum of 1m encroachment into running lanes (2.5m clear traffic width) for an AEP10% event. It is noted that project specific criteria are often more stringent than this requirement.
 - Minimum normal crossfall should be 2.5-3% (Austroads AGRD Part 3, Table 4.2)
- Sight Distance (Refer to Austroads AGRD Part 03, 2021)
 - Stopping & headlight sight distance should be provided in accordance with the AGRD limits for the design speed. A reaction time of 2.0s and coefficient of deceleration of 0.36 would generally be considered the minimum required, however the project Basis of Design Criteria should be consulted to confirm the adopted minimum criteria.
- Level Control (at construction and during operation)

- MRTS30 provides specifications for level control (tolerance) on pavement construction
- MRTS30 specifies the post 12month from practical completion surface deviation should be a maximum of 6mm from a 3m straight edge.
- MRTS30 specifies a Road Roughness of 1.93m/km which is measured at the completion of construction."

Annexure Two

Cut 19 Additional Works

Cut 19 is located between Ch 11775 – 12080 as per the original design documentation.

1. The scope of the Cut 19 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents which may be amended from time-to-time.
2. The IFC Design Documentation will be substantively based on the detailed design documentation as set out in the document titled "Toowoomba Second Range Crossing Cut 19 Landslides Geotechnical Assessment - Detailed Design" dated 19 July 2024 (document no. B01002-11AB).
3. The review of construction for Cut 19 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 19 Additional Works as complete.

Annexure Three

Cut 21 Additional Works

Cut 21 is located between Ch 12720 – 13300 (RHS) and 12720 – 13250 (LHS) as per the original design documentation.

1. The scope of the Cut 21 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 20 February 2024, as amended from time-to-time.
2. Cut 21 Pavement Repairs CH12800 to 13300
 - a. Site inspection to observe current conditions and site survey,
 - b. Detailed design including review and analysis of existing project information survey and design documents,
 - c. Repair works include:
 - i. site establishment,
 - ii. traffic control where impacting the Tollroad,
 - iii. profiling existing pavement to new design profile,
 - iv. place and compact new surface layers to new design profile,
 - v. temporary and permanent line marking to design,
 - vi. site demobilisation.
 - d. construction completion activities including compliance testing, as constructed survey, as built drawings, ongoing assessment of pavement condition and repairs to meet Performance Specification compliance.
3. The review of construction for Cut 21 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 21 Additional Works as complete.

Annexure Four

Cut 24 Additional Works

Cut 24 is located between Chainages 14440 – 14785 as per the original design documentation.

1. The scope of the Cut 24 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 10 January 2024, as amended from time-to-time.
2. The review of construction for Cut 24 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 24 Additional Works as complete.

Annexure Five

Cut 26 Additional Works

Cut 26 is located between Ch 15505-15870 as per the original design documentation.

1. The scope of the Cut 26 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 22 March 2024, as amended from time-to-time.
2. Pavement Repairs Ch15500 – 15800
 - a. Pavement rectification of any deformed and damaged infrastructure including pavements as a result of permanent repairs and temporary works conducted to rectify the Cut 26 damages.
 - b. Ongoing infrastructure condition assessment including but not limited to pavements to meet Performance Specification compliance.
3. The review of construction for Cut 26 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 26 Additional Works as complete.

Annexure Six

Pavement Additional Works

- The scope of Pavement Additional Works will be subject of field validations to confirm the specific location and type of Defect, prior to repair.
- Where chainages in the data do not align with field results if there is a pavement Defect within the vicinity, it will be taken to be part of the Pavement Additional Works scope.
- The D&C Subcontractor will undertake the repair of the Defects subsisting at the locations shown in the indicative chainages listed in Table 1 and 2 below.

Table 1 - Quantity and Type of Defect by 100m Pavement Sections

Tollroad Section	Lane	Texture Depth	Roughness	Rutting
Western Section	EB	8	3	4
Western Section	WB	3	0	3
East/Central Section	EB (LL)	44	0	0
East/Central Section	EB (RL)	15	0	0
East/Central Section	WB (LL)	80	0	0
East/Central Section	WB (RL)	12	0	0
TOTAL 100M Sections	-	162	3	7

Table 2 - Location of Defects by Indicative Chainages (100m Pavement Sections)

Western Section – EB	Western Section – WB	East/Central Section – EB (RL)	East/Central Section – WB (LL)	East/Central Section – WB (RL)	East/Central Section – EB (LL)
27.5 - 27.6	28.7 - 28.8	0.4 - 0.5	0 - 0.1	16.9 - 17	6.7 - 6.8
27.6 - 27.7	31.5 - 31.6	0.8 - 0.9	0.1 - 0.2	17.4 - 17.5	8.6 - 8.7
28.7 - 28.8	40.2 - 40.3	18.7 - 18.8	0.2 - 0.3	18.1 - 18.2	10.3 - 10.4
28.8 - 28.9	30.0 - 30.1	19.3 - 19.4	0.4 - 0.5	18.4 - 18.5	11.5 - 11.6
31.6 - 31.7	30.1 - 30.2	19.4 - 19.5	1.1 - 1.2	19.1 - 19.2	11.7 - 11.8
33 - 33.1	40.6 - 40.7	19.6 - 19.7	1.6 - 1.7	20.6 - 20.7	11.9 - 12
34.3 - 34.4		21 - 21.1	2.2 - 2.3	20.7 - 20.8	12 - 12.1
36.7 - 36.8		22 - 22.1	4 - 4.1	20.9 - 21	15 - 15.1
30.2 - 30.3		23.1 - 23.2	4.3 - 4.4	21.2 - 21.3	15.1 - 15.2
35.6 - 35.7		23.5 - 23.6	4.8 - 4.9	25 - 25.1	16.5 - 16.6
40.2 - 40.3		23.6 - 23.7	4.9 - 5	25.2 - 25.3	16.6 - 16.7
29.7 - 29.8		25.8 - 25.9	5.7 - 5.8	27 - 27.1	17.1 - 17.2
34.7 - 34.8		25.9 - 26	8.3 - 8.4		17.2 - 17.3
37.2 - 37.3		26.3 - 26.4	8.4 - 8.5		17.6 - 17.7

39.1 – 39.2		27.1 - 27.2	8.7 - 8.8		17.7 - 17.8
			8.8 - 8.9		18.1 - 18.2
			8.9 - 9		18.2 - 18.3
			9.8 - 9.9		18.3 - 18.4
			9.9 - 10		18.7 - 18.8
			10.2 - 10.3		19.1 - 19.2
			11.5 - 11.6		19.2 - 19.3
			11.7 - 11.8		19.3 - 19.4
			11.9 - 12		19.4 - 19.5
			12.3 - 12.4		19.5 - 19.6
			12.4 - 12.5		20.1 - 20.2
			12.5 - 12.6		20.5 - 20.6
			13.2 - 13.3		20.6 - 20.7
			13.7 - 13.8		21.1 - 21.2
			13.8 - 13.9		21.3 - 21.4
			13.9 - 14		21.6 - 21.7
			14.5 - 14.6		22.1 - 22.2
			14.6 - 14.7		22.2 - 22.3
			14.8 - 14.9		22.3 - 22.4
			15 - 15.1		22.5 - 22.6
			15.1 - 15.2		22.6 - 22.7
			15.2 - 15.3		23.2 - 23.3
			16.4 - 16.5		23.6 - 23.7
			16.8 - 16.9		23.8 - 23.9
			17.1 - 17.2		25.2 - 25.3
			17.2 - 17.3		25.3 - 25.4
			17.4 - 17.5		26 - 26.1
			17.5 - 17.6		26.4 - 26.5
			17.6 - 17.7		26.6 - 26.7
			17.9 - 18		27 - 27.1
			18.1 - 18.2		
			18.3 - 18.4		

			18.3 - 18.4		
			18.4 - 18.5		
			18.6 - 18.7		
			18.7 - 18.8		
			18.8 - 18.9		
			18.9 - 19		
			19 - 19.1		
			19 - 19.1		
			19.1 - 19.2		
			19.2 - 19.3		
			19.4 - 19.5		
			19.6 - 19.7		
			19.7 - 19.8		
			19.9 - 20		
			20 - 20.1		
			20.1 - 20.2		
			20.2 - 20.3		
			20.3 - 20.4		
			20.4 - 20.5		
			20.6 - 20.7		
			20.7 - 20.8		
			20.8 - 20.9		
			21.6 - 21.7		
			21.9 - 22		
			22.6 - 22.7		
			23.9 - 24		
			25.2 - 25.3		
			26 - 26.1		
			26.1 - 26.2		
			26.2 - 26.3		
			26.3 - 26.4		
			26.4 - 26.5		

			26.5 - 26.6		
			26.7 - 26.8		
			26.9 - 27		
			27 - 27.1		

State Side Deed

Schedule 5

Close-Out Modification (O&M)

[X] 2024

Attention: Mr Andrew Wernbacher
O&M Subcontractor Representative
Ventia Australia Pty Limited
PO Box 9326
Wilsonton Qld 4350

BY TEAMBINDER

Dear Gavin

MODIFICATION ORDER - CLAUSE 33.1 OF THE O&M CONTRACT – VARIATION OF PERFORMANCE SPECIFICATION IN RELATION TO SPECIFIED GEOTECHNICAL ISSUES AND RELATED MATTERS

In this letter, capitalised terms not defined in section 7 adopt the definitions used in the O&M Contract between Nexus Infrastructure Pty Ltd (as trustee) and Ventia Australia Pty Limited (formerly Transfield Services (Australia) Pty Ltd) dated 21 August 2015.

1. **NOT USED**

2. **NOT USED**

3. **ELEMENTS OF MODIFICATION**

Scope of Modification: This Modification Order issued by Project Co under clause 33.1 is for the following:

3.1 **Not used**

3.2 **Compliance with the Performance Specification**

(a) To the extent the Performance Specification incorporates requirements to comply with the GDSMR (but only insofar as it relates to the Works at E24), those requirements are varied (including for the purposes of determining whether E24 (Z2) is Fit for Purpose) as follows:

- (i) subject to paragraph 3.2(c), the requirements of clauses 2.2(a) and 2.2(b) of the GDSMR are to be applied as if those requirements were amended in accordance with Annexure One ;
- (ii) notwithstanding clauses 1(g) of the GDSMR and the references in clauses 2.3(b)(i), (b)(v) and (b)(vi) of the GDSMR to two-dimensional modelling and analysis, 3D modelling based on "Finite Difference Analysis" using FLAC 3D software is deemed an acceptable method of analysis; and
- (iii) subject to paragraph 3.2(b) and paragraph 3.2(c), the requirements of the first paragraph of clause 2.4 of the GDSMR are waived.

(b) The presence of any colluvial slope wash materials must not lead to:

- (i) the SRA score for E24 being assessed as an ARL 1 or 2; and
- (ii) non-compliance with the serviceability requirements of the GDSMR, as set out in clause 2.2(f) of the GDSMR.

- (c) Notwithstanding paragraphs 3.2(a) and 3.2(b) above, Project Co advises the O&M Subcontractor that:
- (i) in the event that there is an unexpected and observable movement on the shear plane at E24 detected through physical observation or monitoring data reported by the Supervising Geotechnical Engineer, the voting members of the TSRC Geotechnical Issues Monitoring and Management Committee will instruct the Supervising Geotechnical Engineer to undertake increased observation and analysis (including through increased frequency of reporting of monitoring data and analysis);
 - (ii) using the monitoring data and analysis provided by the Supervising Geotechnical Engineer, the voting members of the TSRC Geotechnical Issues Monitoring and Management Committee will meet in good faith to discuss what each member considers to be the appropriate course of action to manage any identified risks arising from the movement, taking into account factors including safety, efficiency of process and recent developments in design and construction of earthworks structures similar to E24;
 - (iii) the State must consider the discussions and recommendations of the Embankment 24 Monitoring and Management Committee before taking the action in paragraph (iv) below; and
 - (iv) if the State requires Project Co to rebuild E24 in accordance with clause 37.2 or 22.1 of the Project Deed, Project Co must correspondingly procure the D&C Subcontractor to rebuild E24 in accordance with the requirements of the D&C Subcontract, including the first paragraph of clause 2.4 of the GDSMR.
- (d) Subject to paragraph 3.2(c)(iii), Project Co advises the O&M Subcontractor that the State retains full discretion to exercise its rights under the Project Deed in the event that there is unexpected and observable movement on the shear plane.

3.3 Compliance with Geotechnical Monitoring and Management Plans

If directed by Project Co:

- (a) the Geotechnical Monitoring and Management Plans are Project Plans for the purposes of the O&M Contract.
- (b) the O&M Subcontractor must comply with, and ensure that its Subcontractors comply with, the Geotechnical Monitoring and Management Plans.

3.4 Monitoring Equipment

If Project Co directs the O&M Subcontractor to comply with the Geotechnical Monitoring and Management Plans under paragraph 3.3, to the extent that a Geotechnical Monitoring and Management Plan requires Monitoring Equipment to still be in service or available past the Expiry Date:

- (a) the Monitoring Equipment will constitute equipment for the purposes of the definition of "Tollroad"; and
- (b) the O&M Subcontractor must handover the Monitoring Equipment in good working order and otherwise in accordance with clause 27.2 of the O&M Contract.

3.5 TSRC Geotechnical Issues Monitoring and Management Committee

- (a) Project Co advises the O&M Subcontractor that it is establishing the TSRC Geotechnical Issues Monitoring and Management Committee. Project Co notes that it may be that for this purpose the existing E24 Monitoring and Management Committee members commence to act as the TSRC Geotechnical Issues Monitoring and Management Committee.
- (b) Project Co advises the O&M Subcontractor that:

- (i) the Supervising Geotechnical Engineer will be jointly appointed by Project Co, the D&C Subcontractor and the State at the D&C Subcontractor's cost;
- (ii) the TSRC Geotechnical Issues Monitoring and Management Committee will be comprised of the State, Project Co and the D&C Subcontractor as voting members;
- (iii) the O&M Subcontractor will be entitled to observer membership of the TSRC Geotechnical Issues Monitoring and Management Committee as a non-voting member;
- (iv) the TSRC Geotechnical Issues Monitoring and Management Committee will be governed in accordance with the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference; and
- (v) the TSRC Geotechnical Issues Monitoring and Management Committee is advisory in nature, and its remit is set out in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

3.6 **Identification of Geotechnical Issues**

- (a) Geotechnical Issues may be identified or raised by the State, the Supervising Geotechnical Engineer, Project Co or the D&C Subcontractor.
- (b) Where:
 - (i) Project Co becomes aware of a Geotechnical Issue, Project Co will promptly notify the O&M Subcontractor; and
 - (ii) the Supervising Geotechnical Engineer or the D&C Subcontractor is notified or becomes aware of a Geotechnical Issue – Project Co will procure that party notifies the O&M Subcontractor.
- (c) Not used.

3.7 **Geotechnical Investigation**

- (a) Not used.
- (b) Not used.
- (c) Project Co may further investigate a Geotechnical Issue (**Geotechnical Investigation**). The O&M Subcontractor must ensure (acting reasonably) that all information, access and assistance as is required for each Geotechnical Investigation (including any further investigations undertaken by Project Co or required by the State as contemplated by paragraph 3.7(e)) is promptly provided to Project Co, the State and any appointed expert.
- (d) Not used.
- (e) Project Co may (acting reasonably) direct further action or investigation with respect to the Geotechnical Issue, including by forming the view that a Defect exists and requires rectification.
- (f) Not used.
- (g) Not used.
- (h) Not used.
- (i) Not used.

3.8 **Not used**

3.9 **Not used**

3.10 **Not used**

3.11 **Fitness for Purpose**

To the extent that the Additional Works do not form part of the Outstanding Works, the Fit for Purpose warranty in clauses 5.2(a) and (b) of the O&M Contract will be given in respect of those Additional Works:

- (a) on and from the Date of Additional Works Completion for the relevant item of Additional Works; and
- (b) as if references to:
 - (i) "the Date of Tollroad Completion" in that warranty were references to the "the Date of Additional Works Completion in respect of that item of Additional Works";
 - (ii) "the Tollroad and the Maintained Off-Tollroad Facilities" in that warranty were references to the relevant item of Additional Works; and
 - (iii) "Certificate of Tollroad Completion" in that warranty were references to "Certificate of Additional Works Completion".

4. **NO EFFECT ON RIGHTS**

- (a) No:
 - (i) inspection or review of any Geotechnical Issue by (or on behalf of) Project Co the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation;
 - (ii) review of or comments upon any Geotechnical Issue, Geotechnical Investigation or remedial plan by (or on behalf of) Project Co or the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation; or
 - (iii) failure by (or on behalf of) Project Co or the State, the Supervising Geotechnical Engineer or any other expert appointed as part of the Geotechnical Investigation to detect any non-compliance by the O&M Subcontractor with obligations in accordance with the Project Documents or any Laws,will:
 - (iv) relieve the O&M Subcontractor from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the O&M Contract or otherwise according to Law;
 - (v) prejudice Project Co's rights against the O&M Subcontractor whether under the O&M Contract or otherwise according to Law; or
 - (vi) constitute an approval by Project Co of the O&M Subcontractor performance of its obligations in accordance with the O&M Contract.
- (b) Project Co does not owe the O&M Subcontractor any duty of care or other obligation (howsoever described):
 - (i) to identify Geotechnical Issues; or

- (ii) to review Geotechnical Issues or recommendations or other information provided to Project Co or otherwise in relation to any Geotechnical Investigation.

5. GENERAL PROVISIONS

Project Co directs that:

- (a) the amount payable by Project Co for these Modifications will be paid as a component of each Quarterly Service Payment (O&M) and is as set out in the table below:

Paragraph Reference	Item	Amount Payable
3.2	Variation of Performance Specification.	Nil.
3.3	Compliance with Geotechnical Monitoring and Management Plans, if directed by Project Co	The amount determined subject to and in accordance with the Change Compensation Principles.
3.4	Any maintenance of the Monitoring Equipment required to enable the O&M Subcontractor to comply with paragraph 3.4, if directed by Project Co	The amount determined subject to and in accordance with the Change Compensation Principles.
3.5	Exercising rights as an observer member of the TSRC Geotechnical Issues Monitoring and Management Committee	Nil.
3.7(c)	Ensuring that all information, access and assistance as is required for each Geotechnical Investigation (including any further investigations undertaken by Project Co or required by the State) is promptly provided to Project Co, the State and any appointed expert.	The amount determined subject to and in accordance with the Change Compensation Principles to the extent not otherwise obliged in the O&M Contract.
3.7(e)	Complying with any direction from Project Co to carry out further action or investigation with respect to a Geotechnical Issue.	If the Geotechnical Issue is a Defect, or arises out of or in connection with a Defect, nil. Otherwise, the amount determined subject to and in accordance with the Change Compensation Principles.

- (b) the amount payable by the O&M Subcontractor to Project Co in respect of Savings for these Modifications is \$nil;
- (c) not used;

- (d) there is no amendment to any Relevant Infrastructure, O&M Project Document or application of Standards as part of this Modification, other than as set out in clause 3 and 6; and
- (e) subject to paragraph 6(a), there is no amendment to any relevant warranty given by the O&M Subcontractor under the O&M Contract.

6. **RELIEF UNDER O&M CONTRACT**

- (a) Project Co directs that:

- (i) subject to paragraph 6(a)(ii), provided that:

- (A) the O&M Subcontractor complies with its obligations set out in the clause 2.2(b) of the GDSMR (as amended in accordance with Annexure One) and clause 2.2(f) of the GDSMR to repair adjoining pavement, earthworks, structures and services, subject to the conditions set out in those provisions of the GDSMR; and

- (B) the O&M Subcontractor complies with the E24 Monitoring and Management Plan,

the O&M Subcontractor requirement to meet the Handover Condition in respect of E24 will be modified such that the Handover Condition is consistent with E24 in the condition it was in at Close-Out (as detailed in the SGE Pre-Close-Out Report) and as if the O&M Subcontractor had satisfied all other relevant obligations in accordance with the O&M Contract. This direction will not relieve the O&M Subcontractor of its obligation to meet the Handover Condition for Assets adjoining E24, including addressing any impact of E24 on adjoining Assets;

- (ii) despite paragraph 6(a)(i) above, in the event that:

- (A) there is loss or damage to the Relevant Infrastructure during the Term; or

- (B) a Defect is identified in E24 during the Term,

and Project Co procures the D&C Subcontractor to rebuild or rectify E24 as contemplated by paragraph 3.2(c), the Handover Condition requirement in paragraph 6(a)(i) will be modified so that the Handover Condition for E24 will be consistent with the condition immediately post-rectification or post re-build in accordance with all relevant obligations under the O&M Contract.

- (iii) To the extent Project Co is required to rebuild E24 in accordance with paragraph 3.2(c) of the Modification Order (State), Project Co will give appropriate and reasonable consideration to any proposal by the O&M Subcontractor that any Abatements that have accrued or will accrue and that are attributable to:

- (A) E24 or the Embankment 24 Associated Infrastructure being non-compliant with the Performance Specification in respect of the failure leading to the direction to rebuild E24; or

- (B) the period while Project Co is investigating and undertaking the design and rebuild:

are waived, and will not trigger O&M Major Default (paragraph (a)) or O&M Default Termination Event (paragraph (i)) thresholds.

7. **DEFINITIONS**

In this Modification, the following words have the following meanings:

Additional Works means the Cut 19 Additional Works, the Cut 21 Additional Works, the Cut 24 Additional Works, the Cut 26 Additional Works, and the Pavement Additional Works.

Additional Works Completion means Cut 19 Additional Works Completion, Cut 21 Additional Works Completion, Cut 24 Additional Works Completion, Cut 26 Additional Works Completion and Pavement Additional Works Completion, or any or all of the foregoing as the context may require or permit.

Close-Out Rejection Notice means the notice issued by the Independent Reviewer dated 18 August 2022 and titled 'Part 20 – Independent Reviewer's Notice – Close-Out (Work remaining to be performed)'.

Completion Modification Order means the Modification Order issued by the State in accordance with clause 33.1 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion and Outstanding Works' as a result of the Completion Modification Proposal.

Completion Modification Proposal means the Modification Proposal issued by Project Co in accordance with clause 33.7 of the Project Deed and dated 6 September 2019, with reference 'Tollroad Completion & Outstanding Works'.

Cut 19 means the cutting between chainages 11775 and 12080.

Cut 19 Additional Works means the Works in respect of Cut 19 detailed in Annexure Two.

Cut 19 Additional Works Completion means the stage when the Cut 19 Additional Works have been completed.

Cut 21 means the cutting between chainages 12720 - 13300 (RHS) and 12720 - 13250. (LHS).

Cut 21 Additional Works means the Works in respect of Cut 21 detailed in Annexure Three.

Cut 21 Additional Works Completion means the stage when the Cut 21 Additional Works have been completed.

Cut 21 Monitoring and Management Plan means the plan of that name set out at in document titled "Cut 21 Remediation Validation Monitoring & Management Framework" dated 4 September 2024, including annexed document titled "Cut 21 Right Hand Side – Instrumentation and Monitoring Plan" dated 22 May 2023 (document no. TSRC-ERDEW04-IMP-00001), or such later approved versions.

Cut 24 means the cuttings between chainages 14440 - 14785.

Cut 24 Additional Works means the Works in respect of Cut 24 detailed in Annexure Four.

Cut 24 Additional Works Completion means the stage when the Cut 24 Additional Works have been completed.

Cut 26 means the cutting between chainages 15505 - 15870.

Cut 26 Additional Works means the Works in respect of Cut 26 detailed in Annexure Five.

Cut 26 Additional Works Completion means the stage when the Cut 26 Additional Works have been completed.

Cut 26 Monitoring and Management Plan means the plan of that name set out in document titled "Cut 26 Remediation Validation Monitoring & Management Framework" dated 1 December 2023, including annexed document titled "Cut 26 – Batter Face Remediation Works – Instrumentation and Monitoring Plan for Permanent and Temporary Works", dated 28 November 2023 (document no. TSRC-ERDEW05-IMP-00001), or such later approved versions.

Date of Additional Works Completion means the date stated as the "Date of Additional Works Completion" in the "Certificate of Additional Works Completion".

Embankment 24 or E24 means:

- (c) the embankment created as part of the Works and described as 'Embankment 24' in the Toowoomba Second Range Crossing Project design documentation;
- (d) the immediately surrounding structures to the embankment referred to in paragraph (c) of this definition;
- (e) the earthwork structure on the left hand side of the Tollroad between chainages 15650 - 16300; and
- (f) all monitoring equipment identified in Geotechnical Monitoring and Management Plans.

E24 (Z2) means that portion of E24 West Zone 2, which is the area of Embankment 24 between Ch 16000 and Ch 16250.

E24 Monitoring and Management Plan means the plan of that name set out at in document titled "Embankment 24 Monitoring and Management Plan", dated 9 March 2023, or such later approved version.

Embankment 24 Associated Infrastructure means:

- (g) the immediately surrounding structures to E24;
- (h) the Embankment 24 Buttress; and
- (i) the Monitoring Equipment.

Embankment 24 Buttress means the earthwork structure on the LHS of the Tollroad between chainages 15700 and 16100.

GDSMR means the Geotechnical Design Standard – Minimum Requirements issued by TMR in February 2015.

Geotechnical Investigation has the meaning in paragraph 3.7(c) of this Modification Order.

Geotechnical Issue means any fact, matter or circumstance that may indicate actual or potential:

- (a) issues, problems or concerns with the stability or proper performance of; or
- (b) other geotechnical issues relating to,

any of the following:

- (c) E24 ;
- (d) Cut 21;
- (e) Cut 26.

Geotechnical Monitoring and Management Plans means:

- (a) the E24 Monitoring and Management Plan;
- (b) the Cut 21 Monitoring and Management Plan; and
- (c) the Cut 26 Monitoring and Management Plan.

Modification Order (State) means the Modification Order entitled ' Modification Order - Clause 33.1 of the Project Deed – Close-Out And Outstanding Works Completion' issued by

the State in accordance with clause 33.1 of the Project Deed on or about the date of this Modification Order.

Monitoring Equipment means all monitoring equipment identified in the Geotechnical Monitoring and Management Plans and for the avoidance of doubt, constitutes equipment for the purposes of the definition of Tollroad.

Outstanding Works has the meaning given to that term in the Completion Modification Proposal.

Outstanding Works Completion has the meaning given to that term in the Completion Modification Proposal.

Pavement Additional Works Completion means the stage when the Pavement Additional Works have been completed.

Pavement Additional Works means the Works detailed in Annexure Six.

SGE Pre-Close-Out Report means the report titled "Biannual Monitoring Report – August 24 – Nexus Delivery for the E24 Management Committee" prepared by Supervising Geotechnical Engineer and dated 6 September 2024.

Supervising Geotechnical Engineer has the meaning given to that term in the TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference.

TSRC Geotechnical Issues Monitoring and Management Committee means the committee established in accordance with paragraph 3.5.

TSRC Geotechnical Issues Monitoring and Management Committee Terms of Reference means the document of that title.

Yours sincerely

James Thewlis

Project Co Representative – Toowoomba Second Range Crossing

Annexure One –

Amendments to GDSMR for purposes of Close-Out

- (a) Section 2.2(a) shall be applied as if it is deleted and replaced with the following:

"The Embankment shall be stable at all times. The minimum Factor of Safety (FOS) during construction shall be 1.30. Over the long-term, the Embankment must perform in a manner that is consistent with the tolerably safe movement of traffic on the Tollroad, i.e. meeting the criteria of ARL 3 (subject to compliance with the E24 Monitoring and Management Plan), ARL 4 or ARL 5. Regular instrumentation monitoring and the plotting of settlement and pore pressure development over time sufficient to demonstrate compliance with minimum FOS post construction must be provided to TMR."

- (b) Section 2.2(b) shall be applied as if it is deleted and replaced with the following:

"If post-construction in-service movements exceed the limits set in the applicable section of the Austroads Guide to Road Design (AGRD) as noted below, Project Co is required to repair adjoining pavement to the extent required to restore the geometry of the Tollroad to within the Austroad prescribed limits."

- Aquaplaning (Refer to Austroads AGRD Part 5A, 2023)
 - Absolute maximum film depth 4.0mm (intervention level)
 - Design film depth 2.5mm (to provide allowance for deterioration to a maximum of 4mm prior to intervention being required)
- Crossfall rate of rotation (Refer to Austroads AGRD Part 03, 2021)
 - Rate of rotation of 2.5% per second (Desirable maximum)
 - Rate of rotation of 3.0% per second (Absolute maximum)
- Crossfall
 - Design crossfall to be retained to provide the intended design friction demand for the horizontal radius and design speed. (Refer to Austroads AGRD Part 03, 2021)
 - Design crossfall to be retained to provide the design flow widths specified in the project Basis of Design Criteria. TMR's drainage manual (Road Drainage Manual, TMR, Sep 2019) allows for maximum of 1m encroachment into running lanes (2.5m clear traffic width) for an AEP10% event. It is noted that project specific criteria are often more stringent than this requirement.
 - Minimum normal crossfall should be 2.5-3% (Austroads AGRD Part 3, Table 4.2)
- Sight Distance (Refer to Austroads AGRD Part 03, 2021)
 - Stopping & headlight sight distance should be provided in accordance with the AGRD limits for the design speed. A reaction time of 2.0s and coefficient of deceleration of 0.36 would generally be considered the minimum required, however the project Basis of Design Criteria should be consulted to confirm the adopted minimum criteria.
- Level Control (at construction and during operation)

- MRTS30 provides specifications for level control (tolerance) on pavement construction
- MRTS30 specifies the post 12month from practical completion surface deviation should be a maximum of 6mm from a 3m straight edge.
- MRTS30 specifies a Road Roughness of 1.93m/km which is measured at the completion of construction."

Annexure Two

Cut 19 Additional Works

Cut 19 is located between Ch 11775 – 12080 as per the original design documentation.

1. The scope of the Cut 19 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, as certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents which may be, amended from time-to-time.
2. The review of construction for Cut 19 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 19 Additional Works as complete.

Annexure Three

Cut 21 Additional Works

Cut 21 is located between Ch 12720 – 13300 (RHS) and 12720 – 13250 (LHS) as per the original design documentation.

1. The scope of the Cut 21 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 20 February 2024, as amended from time-to-time.
2. Cut 21 Pavement Repairs CH12800 to 13300
 - a. Site inspection to observe current conditions and site survey,
 - b. Detailed design including review and analysis of existing project information survey and design documents,
 - c. Repair works include:
 - i. site establishment,
 - ii. traffic control where impacting the Tollroad,
 - iii. profiling existing pavement to new design profile,
 - iv. place and compact new surface layers to new design profile,
 - v. temporary and permanent line marking to design,
 - vi. site demobilisation.
 - d. construction completion activities including compliance testing, as constructed survey, as built drawings, ongoing assessment of pavement condition and repairs to meet Performance Specification compliance.
3. The review of construction for Cut 21 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 21 Additional Works as complete.

Annexure Four

Cut 24 Additional Works

Cut 24 is located between Chainages 14440 – 14785 as per the original design documentation.

1. The scope of the Cut 24 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 10 January 2024, as amended from time-to-time.
2. The review of construction for Cut 24 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 24 Additional Works as complete.

Annexure Five

Cut 26 Additional Works

Cut 26 is located between Ch 15505-15870 as per the original design documentation.

1. The scope of the Cut 26 Additional Works will be in accordance with the Issued For Construction (IFC) Design Documentation, certified by the D&C Subcontractor's appointed RPEQ and reviewed by the Independent Reviewer, the State and Project Co in accordance with the Project Documents on 22 March 2024, as amended from time-to-time.
2. Pavement Repairs Ch15500 – 15800
 - a. Pavement rectification of any deformed and damaged infrastructure including pavements as a result of permanent repairs and temporary works conducted to rectify the Cut 26 damages.
 - b. Ongoing infrastructure condition assessment including but not limited to pavements to meet Performance Specification compliance.
3. The review of construction for Cut 26 Additional Works by the Independent Reviewer in accordance with the IFC Design Documentation and Project Documents. IR to certify the Cut 26 Additional Works as complete.

Annexure Six

Pavement Additional Works

- The scope of Pavement Additional Works will be subject of field validations to confirm the specific location and type of Defect, prior to repair.
- Where chainages in the data do not align with field results if there is a pavement Defect within the vicinity, it will be taken to be part of the Pavement Additional Works scope.
- The D&C Subcontractor will undertake the repair of the Defects subsisting at the locations shown in the indicative chainages listed in Table 1 and 2 below.

Table 1 - Quantity and Type of Defect by 100m Pavement Sections

Tollroad Section	Lane	Texture Depth	Roughness	Rutting
Western Section	EB	8	3	4
Western Section	WB	3	0	3
East/Central Section	EB (LL)	44	0	0
East/Central Section	EB (RL)	15	0	0
East/Central Section	WB (LL)	80	0	0
East/Central Section	WB (RL)	12	0	0
TOTAL 100M Sections	-	162	3	7

Table 2 - Location of Defects by Indicative Chainages (100m Pavement Sections)

Western Section – EB	Western Section – WB	East/Central Section – EB (RL)	East/Central Section – WB (LL)	East/Central Section – WB (RL)	East/Central Section – EB (LL)
27.5 - 27.6	28.7 - 28.8	0.4 - 0.5	0 - 0.1	16.9 - 17	6.7 - 6.8
27.6 - 27.7	31.5 - 31.6	0.8 - 0.9	0.1 - 0.2	17.4 - 17.5	8.6 - 8.7
28.7 - 28.8	40.2 - 40.3	18.7 - 18.8	0.2 - 0.3	18.1 - 18.2	10.3 - 10.4
28.8 - 28.9	30.0 - 30.1	19.3 - 19.4	0.4 - 0.5	18.4 - 18.5	11.5 - 11.6
31.6 - 31.7	30.1 - 30.2	19.4 - 19.5	1.1 - 1.2	19.1 - 19.2	11.7 - 11.8
33 - 33.1	40.6 - 40.7	19.6 - 19.7	1.6 - 1.7	20.6 - 20.7	11.9 - 12
34.3 - 34.4		21 - 21.1	2.2 - 2.3	20.7 - 20.8	12 - 12.1
36.7 - 36.8		22 - 22.1	4 - 4.1	20.9 - 21	15 - 15.1
30.2 - 30.3		23.1 - 23.2	4.3 - 4.4	21.2 - 21.3	15.1 - 15.2
35.6 - 35.7		23.5 - 23.6	4.8 - 4.9	25 - 25.1	16.5 - 16.6
40.2 - 40.3		23.6 - 23.7	4.9 - 5	25.2 - 25.3	16.6 - 16.7
29.7 - 29.8		25.8 - 25.9	5.7 - 5.8	27 - 27.1	17.1 - 17.2
34.7 - 34.8		25.9 - 26	8.3 - 8.4		17.2 - 17.3

37.2 – 37.3		26.3 - 26.4	8.4 - 8.5		17.6 - 17.7
39.1 – 39.2		27.1 - 27.2	8.7 - 8.8		17.7 - 17.8
			8.8 - 8.9		18.1 - 18.2
			8.9 - 9		18.2 - 18.3
			9.8 - 9.9		18.3 - 18.4
			9.9 - 10		18.7 - 18.8
			10.2 - 10.3		19.1 - 19.2
			11.5 - 11.6		19.2 - 19.3
			11.7 - 11.8		19.3 - 19.4
			11.9 - 12		19.4 - 19.5
			12.3 - 12.4		19.5 - 19.6
			12.4 - 12.5		20.1 - 20.2
			12.5 - 12.6		20.5 - 20.6
			13.2 - 13.3		20.6 - 20.7
			13.7 - 13.8		21.1 - 21.2
			13.8 - 13.9		21.3 - 21.4
			13.9 - 14		21.6 - 21.7
			14.5 - 14.6		22.1 - 22.2
			14.6 - 14.7		22.2 - 22.3
			14.8 - 14.9		22.3 - 22.4
			15 - 15.1		22.5 - 22.6
			15.1 - 15.2		22.6 - 22.7
			15.2 - 15.3		23.2 - 23.3
			16.4 - 16.5		23.6 - 23.7
			16.8 - 16.9		23.8 - 23.9
			17.1 - 17.2		25.2 - 25.3
			17.2 - 17.3		25.3 - 25.4
			17.4 - 17.5		26 - 26.1
			17.5 - 17.6		26.4 - 26.5
			17.6 - 17.7		26.6 - 26.7
			17.9 - 18		27 - 27.1
			18.1 - 18.2		

			18.3 - 18.4		
			18.3 - 18.4		
			18.4 - 18.5		
			18.6 - 18.7		
			18.7 - 18.8		
			18.8 - 18.9		
			18.9 - 19		
			19 - 19.1		
			19 - 19.1		
			19.1 - 19.2		
			19.2 - 19.3		
			19.4 - 19.5		
			19.6 - 19.7		
			19.7 - 19.8		
			19.9 - 20		
			20 - 20.1		
			20.1 - 20.2		
			20.2 - 20.3		
			20.3 - 20.4		
			20.4 - 20.5		
			20.6 - 20.7		
			20.7 - 20.8		
			20.8 - 20.9		
			21.6 - 21.7		
			21.9 - 22		
			22.6 - 22.7		
			23.9 - 24		
			25.2 - 25.3		
			26 - 26.1		
			26.1 - 26.2		
			26.2 - 26.3		
			26.3 - 26.4		

			26.4 - 26.5		
			26.5 - 26.6		
			26.7 - 26.8		
			26.9 - 27		
			27 - 27.1		

State Side Deed

Schedule 6

D&C Subcontractor Deed Poll

Acciona Infrastructure Australia Pty Limited ACN 140 915 251 and Ferrovial Construction (Australia) Pty Limited ACN 150 820 116

Deed Poll

Toowoomba Second Range Crossing Project

The Allens contact for this document is Nicholas Ng

480 Queen Street
Brisbane QLD 4000 Australia
T +61 7 3334 3000
F +61 7 3334 3444
www.allens.com.au

© Allens Australia 2024

This Deed Poll is made on

Party

Acciona Infrastructure Australia Pty Limited ACN 140 915 251 and Ferrovial Construction (Australia) Pty Limited ACN 150 820 116 of c/ Allens, Level 26, 480 Queen Street, Brisbane QLD 4000 (the **D&C Subcontractor**).

in favour of:

The State of Queensland (the State)

Recitals

A On or about the date of this Deed Poll:

- the State and Nexus Infrastructure Pty Limited ACN 600 535 180 (**Project Co**) entered into a Deed of Settlement and Release in respect of the Toowoomba Second Range Crossing project (**Upstream Deed of Settlement and Release**); and
- Project Co and the D&C Subcontractor entered into a Deed of Settlement and Release (Downstream) in respect of the Toowoomba Second Range Crossing project (**Downstream Deed of Settlement and Release**).

B The D&C Subcontractor wishes to extend the benefit of a number of its promises under the Downstream Deed of Settlement and Release to the State, on and subject to the terms of this Deed Poll.

It is declared as follows.

1 Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless, and except to the extent that, the context otherwise indicates or requires, any term or expression defined in the Downstream Deed of Settlement and Release has the same meaning in this deed.

Claims means all and any actions, allegations, demands, claims (including crossclaims, counter-claims and set-offs), causes of actions, suits, proceedings, entitlements (including to compensation of any kind), rights (including in respect of any Liabilities), determinations, judgments and any other form of relief, whether legal, equitable, under statute or otherwise, and all other Liabilities of any nature (whether or not the parties were or could have been aware of them).

Deed of Settlement and Release (Upstream) means the deed titled 'Deed of settlement and release (Upstream)' between Project Co and the State dated on or around the date of this deed.

Existing Issues has the meaning given in the Deed of Settlement and Release (Upstream).

Liabilities means all and any liabilities (whether accrued, prospective or contingent or whether the amount of the liability is ascertained) including debts due.

Preserved D&C Claim means any Claims by the D&C Subcontractor against the State:

- (a) relating to, arising out of, or in connection with any Defects (including any Works which are disputed as constituting a Defect) which are first notified after the Execution Date;

- (b) seeking orders for declaratory relief that Close-Out has occurred despite the Close-Out Modification or Certificate of Close-Out having been determined by a court to be invalid or otherwise ineffective in an action to which the State is a party; and/or
- (c) which directly arises out of a claim made by any person not a party to this deed against the D&C Subcontractor or a provider of Insurance arising out of personal injury or property damage to the property of that person.

Release Date has the meaning given in the Deed of Settlement and Release (Upstream).

1.2 Interpretation

Clause 1.2 of the Downstream Deed of Settlement and Release applies to this Deed Poll as if set out in full.

1.3 Downstream Deed of Settlement and Release

In this Deed Poll, references to the Downstream Deed of Settlement and Release mean the Downstream Deed of Settlement and Release (as defined in Recital A) as originally executed by Project Co and the D&C Subcontractor, subject only to those amendments which have been consented to by the State.

2 Conditions Precedent

This Deed Poll will not commence unless and until the Effective Date occurs.

3 Release

3.1 D&C Subcontractor release

- (a) Subject to clause 3.1(b), on and from the Release Date, the D&C Subcontractor unconditionally and irrevocably, absolutely and forever releases and discharges the State from all Claims by the D&C Subcontractor against the State arising out of or in connection with:
 - (i) the D&C Subcontract or the Project (including in respect of the Indemnified Matters) (**Released Matters**), whether:
 - (A) past, present or future;
 - (B) actual or contingent; or
 - (C) known or unknown,relating to, arising out of or in any way connected with the Project or the D&C Project Documents, where such a Claim in respect of the Released Matters:
 - (D) is based on facts, matters or circumstances that exist as at, or prior to, the Execution Date; or
 - (E) could have been brought by the D&C Subcontractor as at, or prior to, the Execution Date; and
 - (ii) the Close-Out Modification, the Close-Out Modification (D&C), the Close-Out Modification (O&M), the Close-Out State Side Deed, and the Close-Out D&C Side Deed.
- (b) The State and the D&C Subcontractor acknowledge and agree that:
 - (i) the releases in clause 3.1(a) exclude any Preserved D&C Claim, and notwithstanding any other provision of this Deed Poll the D&C Subcontractor does not release the State from any Preserved D&C Claim; and

- (ii) nothing in clause 3.1(a) limits or affects any defence that the D&C Subcontractor may have to a Claim made by the State against the D&C Subcontractor relating to:
 - (A) the Existing Issues; or
 - (B) an alleged breach by the D&C Subcontractor of any terms of this deed.
- (c) The D&C Subcontractor must not bring or pursue, or procure that a third party bring or pursue, a Claim against the State in respect of any matter which is the subject of the release under clause 3.1(a) of this Deed Poll.
- (d) On and from the Release Date, the D&C Subcontractor indemnifies and keeps indemnified the State from all Loss to the extent caused or contributed to by any Claim made by or on behalf of, or procured by, the D&C Subcontractor, including the costs of defending that Claim in respect of any matter which is the subject of a release under clause 3.1(a) of this Deed Poll.

4 Binding effect of this Deed Poll

This Deed Poll binds the D&C Subcontractor and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

5 Warranty

The D&C Subcontractor warrants that:

- (a) It has taken independent legal advice as to the nature, effect and extent of this Deed Poll;
- (b) neither the State nor its officers have made any promise, representation or inducement or been party to any conduct material to the D&C Subcontractor entering into this Deed Poll other than as set out in this Deed Poll; and
- (c) it is aware that the State is relying on the warranties in this clause 5.

6 General

6.1 Governing law

This Deed Poll is governed by and must be construed according to the laws of Queensland.

6.2 Jurisdiction

- (a) The D&C Subcontractor submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed Poll.
- (b) The D&C Subcontractor waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a).

6.3 Confidentiality and public announcements

Clause 50 of the D&C Subcontract applies to this deed.

6.4 Severance

If at any time any provision of this Deed Poll is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed Poll; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed Poll.

6.5 Amendments

This Deed Poll may only be varied by a deed poll signed by the D&C Subcontractor on terms acceptable to the State.

Executed and delivered as a Deed.

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Acciona Infrastructure Australia Pty Limited:

Director

Director/Secretary

Print Name

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
**Ferrovial Construction (Australia) Pty
Limited:**

Director

Director/Secretary

Print Name

Print Name

State Side Deed

Schedule 7

Conduct of Defence Deed

Conduct of Defence Deed

The State of Queensland

The State

Acciona Infrastructure Australia Pty Limited and Ferrovial Construction
(Australia) Pty Ltd

Collectively, the D&C Subcontractor

Clayton Utz
Lawyers
Level 28 Riparian Plaza
71 Eagle Street
Brisbane QLD 4000
GPO Box 9806
Brisbane QLD 4001
Tel + 61 7 3292 7000
Fax +61 7 3221 9669
www.claytonutz.com

Our reference 12300/80169829

L354759128.2

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	3
1.3	Project Deed	3
2.	Conduct of the Defence	3
2.1	Authorisation by State	3
2.2	Independent legal advice	4
2.3	Responsibilities of the D&C Subcontractor	4
2.4	Documents delivered or received by the D&C Subcontractor	4
3.	The State's Obligations	5
4.	Common Interest Privilege and Confidentiality	5
5.	End of conduct of defence	7
5.1	Notice of end of conduct of defence	7
5.2	Facilitate end of conduct of defence	7
6.	Binding effect of this deed	7
7.	General	7
7.1	Governing law	7
7.2	Jurisdiction	7
7.3	Severance	8
7.4	Entire agreement	8
7.5	Amendments	8
7.6	Waiver	8
7.7	Costs	8
8.	Counterparts	8
8.1	Counterparts	8
8.2	Electronic communication	9
	Schedule 1 COD Claims	11

Conduct of Defence Deed

Date

Parties **The State of Queensland (the State)**

Acciona Infrastructure Australia Pty Limited ACN 140 915 251 and Ferrovial Construction (Australia) Pty Limited ACN 150 820 116 c/- Allens, Level 26, 480 Queen Street, Brisbane QLD 4000 (together **the D&C Subcontractor**)

Background

- A. The State and Project Co are parties to the Close-Out State Side Deed..
- B. Under the terms of the Close-Out State Side Deed, if an O&M Originating Claim is made against the State:
 - (a) the State can elect for the D&C Subcontractor to conduct the defence of the claim; and
 - (b) the D&C Subcontractor may, but is not obliged to, accept to conduct the defence of the claim.
- C. The State has elected for the D&C Subcontractor to conduct the defence of the O&M Originating Claims identified in Schedule 1 of this deed and the D&C Subcontractor has agreed to do so.
- D. This deed is entered into by the State and the D&C Subcontractor to record the terms on which the D&C Subcontractor will conduct a defence of those claims and any additional O&M Originating Claims that the parties agree the D&C Subcontractor will conduct the defence.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed, unless, and except to the extent that, the context otherwise indicates or requires, any term or expression defined in the Project Deed has the same meaning in this deed and:

Acceptance of Additional Claim means a notice signed by the D&C Subcontractor that it agrees to conduct the defence of the Originating O&M Claim that is specified in the notice in accordance with this deed.

Close-Out State Side Deed means the deed titled 'Close-Out Modification – State Side Deed – Toowoomba Second Range Crossing' between Project Co and the State dated [].

COD Claim means:

- (a) the O&M Originating Claims identified in Schedule 1 of this deed; and

- (b) any additional O&M Originating Claim in respect of which:
 - (i) the State has given notice under clause 3.1(d) of the Close-Out State Side Deed that it elects the process in clause 3.2 of the Close-Out State Side Deed to apply; and
 - (ii) Project Co has given the State a notice under clause 3.2(d) of the Close-Out State Side Deed including a relevant Acceptance of Additional Claim.

Commencement Date means the date of this deed.

Confidential Information means information in any form (including written and oral information) relating to or prepared in relation to the conduct of the defence of a COD Claim, including:

- (a) information acquired from the State;
- (b) advice provided by the Legal Representatives to the State and the D&C Subcontractor and all documents prepared for the purpose of the conduct of the defence of a COD Claim;
- (c) the existence or contents of this deed;
- (d) information that is designated by the State as confidential; and
- (e) information that the D&C Subcontractor knows or ought to have known is confidential,

however obtained, ascertained, discovered or derived by the D&C Subcontractor either before or after the date of this deed, but does not include information to the extent it is or becomes public knowledge, except by breach of this deed by the D&C Subcontractor.

Effective Date means:

- (a) in respect of the COD Claims identified in Schedule 1 of this deed, the Commencement Date; and
- (b) in respect of an additional COD Claim, the date that an Acceptance of Additional Claim is given to Project Co and the State in respect of the COD Claim.

Legal Representatives means the lawyers (including barristers) retained by the State in relation to the conduct of the defence of a COD Claim, but selected and instructed by the D&C Subcontractor.

O&M Originating Claim has the meaning given in the Close-Out State Side Deed.

Party means a party to this deed.

Project Deed means the deed entitled "*Project Deed – Toowoomba Second Range Crossing*" between Project Co and the State dated 21 August 2015.

1.2 Interpretation

In this deed, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this deed;
- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **includes** in any form is not a word of limitation; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

1.3 Project Deed

In this deed, references to the Project Deed and the Close-Out State Side Deed mean those documents as at the date of this deed, subject only to those amendments subsequent to the date of this deed which have been consented to by the D&C Subcontractor.

2. Conduct of the Defence

2.1 Authorisation by State

On and from the Effective Date:

- (a) the State authorises the D&C Subcontractor to conduct the defence of a COD Claim on the State's behalf in accordance with and subject to this deed;
- (b) the State authorises the D&C Subcontractor to select and instruct the Legal Representatives to conduct the defence of a COD Claim on behalf of the State and

to conduct any activities in relation to the defence as may be contemplated by this deed; and

- (c) both the State and the D&C Subcontractor shall be the clients of the Legal Representatives.

2.2 Independent legal advice

Notwithstanding clause 2.1, the State may appoint at any time its choice of legal representative to act for and advise the State in connection with a relevant COD Claim and its defence. The State has no obligation to provide, and the D&C Subcontractor has no entitlement to receive, a copy of any legal advice or other document the subject of such separate engagement.

2.3 Responsibilities of the D&C Subcontractor

- (a) The D&C Subcontractor will select and instruct the Legal Representatives to conduct the defence of a COD Claim on behalf of the State.
- (b) Subject to the terms of this deed, the D&C Subcontractor has an absolute discretion as to the day to day conduct of the defence of a COD Claim.
- (c) The D&C Subcontractor will conduct the defence of a COD Claim on behalf of the State at the D&C Subcontractor's own cost.
- (d) The D&C Subcontractor (by itself or by the Legal Representatives) will keep the State informed of matters relevant to the conduct of defence on a monthly basis or when there are any material developments relating to a COD Claim.
- (e) The D&C Subcontractor will not compromise a COD Claim without the written agreement of the State, which shall not be withheld unreasonably.
- (f) The D&C Subcontractor will provide to the State (through delivery by the D&C Subcontractor or the Legal Representatives to the State or as may be instructed or agreed from time to time) copies of all documents relating to the defence of a COD Claim, as soon as practicable after these documents are sent or received by the D&C Subcontractor .

2.4 Documents delivered or received by the D&C Subcontractor

- (a) Subject to clause 2.3(b) below:
 - (i) not less than 5 Business Days before any document is served on behalf of the State in the conduct of the defence of a COD Claim, the D&C Subcontractor will make that document available in draft for review by the State (through delivery by the D&C Subcontractor or the Legal Representatives to the State or as may be instructed or agreed from time to time). The D&C Subcontractor will, acting reasonably, take into account any comments made by the State on the draft documents.
 - (ii) the 5 Business Days period in clause 2.3(a)(i) above will not apply in circumstances where that amount of notice is not practical for reasons beyond the D&C Subcontractor 's control (for example and without limitation, where there is a requirement to comply with a short deadline that is imposed by a court or tribunal so as to render the relevant step impractical). In such circumstances, the D&C Subcontractor will use its reasonable endeavours to provide the State with drafts of any

documents and take into account the State's comments in the period available prior to filing and serving the documents;

- (iii) in no event will the D&C Subcontractor file and serve any document in court proceedings without first providing the State with a draft of the document for its review and:
 - A. the D&C Subcontractor, acting reasonably, has taken into account the State's comments;
 - B. obtained the State's consent to file and serve.
- (b) Clause 2.3(a) does not apply to correspondence concerning the day to day conduct of the defence of a COD Claim.
- (c) The D&C Subcontractor will promptly, and in no less than 2 Business Days, provide the State with copies of documents given or received by it concerning a COD Claim.

3. The State's Obligations

The State acknowledges and agrees:

- (a) unless otherwise agreed by the D&C Subcontractor in writing, that the State will not settle a COD Claim;
- (b) to provide, or procure provision of, such information, correspondence, documents and assistance as may be reasonably required in order for the D&C Subcontractor and the Legal Representatives to conduct the defence of a COD Claim on the State's behalf, including for the purposes of disclosure; and
- (c) to inform the D&C Subcontractor and the Legal Representatives of any change in circumstances likely to affect an issue in the defence of a COD Claim.

4. Common Interest Privilege and Confidentiality

- (a) The Parties acknowledge that on or after the Commencement Date and subject to clause 4(c) below:
 - (i) they intend that legal professional privilege is maintained in relation to all legal advice provided by the Legal Representatives to the D&C Subcontractor and the State and all documents prepared for the purpose of the conduct of the defence of a COD Claim that are subject to legal professional privilege;
 - (ii) the D&C Subcontractor and the State have a common interest in any documents and advice prepared for the purposes of the conduct of the defence of a COD Claim;
 - (iii) in disclosing to the other party any documents or advice prepared for the purpose of the conduct of defence that are subject to legal professional privilege:
 - A. the disclosing party does not intend to waive any legal professional privilege that it holds in such documents or advice;

- B. the disclosing party considers that any such documents or advice provided to the other party including expert reports are documents to which legal professional privilege applies; and
 - C. the disclosing party is providing the documents or advice as being subject to legal professional privilege on the basis they will be held by the other party as Confidential Information and will not be disclosed to any third party without the other party's prior written consent.
- (b) Each of the D&C Subcontractor and the State:
 - (i) will at all times treat the Confidential Information as confidential and privileged;
 - (ii) will only use the Confidential Information for purposes directly related to the conduct of defence of a COD Claim unless authorised;
 - (iii) will not, and will ensure that its officers, employees and agents do not, unilaterally waive confidentiality or privilege over the Confidential Information;
 - (iv) will not, subject to clause 4(c) below, disclose or cause or permit the disclosure of the Confidential Information to any person; and
 - (v) will keep the Confidential Information, and any other documents the parties may create which refer to or contain any Confidential Information, secure and protected from any use, disclosure or access which is inconsistent with the common interest and this deed.
- (c) The D&C Subcontractor and the State may disclose or cause or permit the disclosure of any Confidential Information if:
 - (i) the disclosure is to a legal representative (including internal legal representatives) of the D&C Subcontractor or the State;
 - (ii) the disclosure (to the extent that the disclosing party reasonably considers such disclosure to be necessary) is to a party's professional advisors if that other person has first agreed that the Confidential Information is confidential and privileged and agrees to treat it in the manner that is contemplated by clause 4(b) above;
 - (iii) the other party consents to the disclosure in writing; or
 - (iv) the disclosure is required by statute or by order of a Court of competent jurisdiction.
- (d) The D&C Subcontractor and the State will notify the other party of any unauthorised disclosure or use of any Confidential Information of which it becomes aware.
- (e) For the avoidance of doubt, the provisions of this clause are not intended to, and do not, apply to confidential and privileged communications between:
 - (i) the D&C Subcontractor and its legal representatives on the one hand; and
 - (ii) the State and its legal representatives on the other hand,

in relation to each party's individual interest in a COD Claim and/or their rights against the other party, including any rights under the terms of this deed.

5. End of conduct of defence

5.1 Notice of end of conduct of defence

The D&C Subcontractor acknowledges that the State may at any time in its absolute discretion end the D&C Subcontractor's conduct of defence of a COD Claim by giving to Project Co a notice under clause 3.1(g) of the Close-Out State Side Deed that the State will conduct the defence of the COD Claim the subject of the notice.

5.2 Facilitate end of conduct of defence

If a notice referred to in clause 5.1 of this deed is given by the State to Project Co:

- (a) all authorities given by the State to the D&C Subcontractor under this deed in respect of the COD Claim the subject of the notice are terminated;
- (b) the State will continue as the sole client of the Legal Representatives in respect of the COD Claim the subject of the notice until the State chooses to end the engagement of the Legal Representatives;
- (c) the D&C Subcontractor:
 - (i) must not at any future time engage the Legal Representatives in relation to any matter or circumstances relating to the COD Claim the subject of the notice;
 - (ii) must upon request return to the State documents that the State may have provided relating to the COD Claim the subject of the notice; and
 - (iii) otherwise facilitate the State to become responsible for the conduct of the defence of the COD Claim the subject of the notice.

6. Binding effect of this deed

This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

7. General

7.1 Governing law

This deed is governed by and must be construed according to the laws of Queensland.

7.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that

any proceedings have been brought in an inconvenient forum, where that venue falls within clause 7.2(a).

7.3 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.4 Entire agreement

To the extent permitted by law, in relation to the subject matter of this deed, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

7.5 Amendments

This deed may only be varied by a deed signed by or on behalf of each party.

7.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

7.7 Costs

The parties bear their own costs of and in relation to the negotiation and preparation of this deed.

8. Counterparts

8.1 Counterparts

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

8.2 Electronic communication

Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

Executed as a deed.

Executed by the State

Signed, sealed and delivered for and on behalf of the **State of Queensland** by **[insert]**,
Department of Transport and Main Roads in the presence of:

Signature of witness

Full name of witness

Signature

Signature

Executed by the D&C Subcontractor

Signed Sealed and Delivered by **Acciona Infrastructure Australia Pty Limited ACN 140 915 251** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Signed Sealed and Delivered by **Ferrovial Construction (Australia) Pty Limited ACN 150 820 116** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Schedule 1 COD Claims

The following O&M Originating Claims are COD Claims at the Commencement Date:

[here list the claims]